S. HRG. 99-314

ENUMERATION OF UNDOCUMENTED ALIENS IN THE DECENNIAL CENSUS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND GOVERNMENT PROCESSES

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

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CONTENTS

Opening statements: Page

Senator Cochran 1

Senator Glenn 2

WITNESSES

SEPTEMBER 18, 1985

Doris Meissner, Executive Associate Commissioner, Immigration and Naturalization Service, accompanied by Robert Warren, Acting Director for Statistical Analysis 3

John Keane, Director, Bureau of the Census, accompanied by Peter Bounpane, Assistant Director for Demographic Censuses, and Jeff Passel, chief, population analysis staff 13

John Noonan, professor, University of California School of Law 33

ALPHABETICAL LIST OF WITNESSES

Bounpane, Peter: Testimony 13

Keane, John:

Testimony 13

Prepared statement 19

Meissner, Doris:

Testimony 3

Prepared statement 8

Noonan, John:

Testimony 33

Prepared statement 38

Passel, Jeff: Testimony 13

Warren, Robert: Testimony 3

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Statement of Roger Conner, executive director, Federation for American Immigration Reform [FAIR] 53

"Analysis of Procedures the Census Bureau Could Use Regarding Counting Undocumented Aliens in the 1990 Census," by Daniel Melnick, Congressional Research Service, September 17, 1985 64

"Adjusting the State Populations Used for Reapportionment to Account for Aliens," by David C. Huckabee, Congressional Research Service, August 3, 1984 69

ENUMERATION OF UNDOCUMENTED ALIENS IN THE DECENNIAL CENSUS

WEDNESDAY, SEPTEMBER 18, 1985

U.S. SENATE,
SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION AND GOVERNMENT PROCESSES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met at 2:06 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Thad Cochran (chairman of the subcommittee) presiding.

Present: Senator Cochran.

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. The subcommittee will please come to order. I want to welcome you all here today for our hearing. This hearing is on the enumeration of undocumented aliens in the decennial census.

It is our intention to examine the practice of enumerating undocumented aliens and the legal history and requirements for enumeration, as well as legal alternatives.

The Constitution requires the apportionment of the House of Representatives among the States according to their respective numbers and establishes the decennial census to be carried out in such a manner as Congress directs. The Bureau of the Census has the responsibility of conducting the census and has made special efforts to ensure that an accurate and complete accounting of the Nation's population is accomplished.

This accounting has included undocumented aliens who are present in the United States.

I want to commend the Bureau of the Census for its diligence and commitment to fulfilling its responsibilities. But frankly, I am concerned about the fact that the U.S. House of Representatives is apportioned on the basis of an accounting of our population which includes persons who are not citizens, who don't have a right to vote.

I think it is important that we understand fully what the census practices are with respect to illegal aliens, persons who are not citizens, and what impact their inclusion in the decennial census has on the allocation of U.S. Representatives among the States.

No one really knows how many illegal aliens there are in the United States, but most agree that the number is large and increasing. Estimates have ranged from 2 to 12 million.

In the 1980 report to the Select Commission on Immigration and Refugee Policy, the Census Bureau estimated that in 1978, there were between 3 and 6 million illegal immigrants in the United States, with a growth rate of 250,000 to 500,000 per year.

Most recently, the Bureau has estimated that it counted over 2 million illegal immigrants in the 1980 census. That figure is only slightly less than the total population of the entire State of Mississippi, just as an aside.

Illegal immigration is a very important social issue confronting our country, and as everyone knows, we are working today to wrap up legislation to finalize our action on legislation reported out of the Judiciary Committee for immigration reform.

Whether our Constitution and laws require the enumeration and representation of undocumented aliens is a question that requires our careful examination.

So that we may obtain a better understanding of the facts and legalities surrounding the issue, we have invited representatives of the Immigration and Naturalization Service, the Bureau of the Census, and one of the country's legal scholars to present testimony to this hearing.

We have with us Executive Associate Commissioner Doris Meissner of the Immigration and Naturalization Service; Robert Warren, Acting Director of Statistical Analysis, who will assist us at the hearing; and Dr. Jack Keane, Director of the Census Bureau, Peter Bounpane, Assistant Director for Demographic Censuses and Jeff Passel are here to explain enumeration procedures. Prof. John Noonan of the University of California, Berkeley, will discuss the legal side of the issue.

At this point in the record I would like to insert a statement by Senator Glenn, who was unable to be here today.

[Senator Glenn's statement follows:]

OPENING STATEMENT OF SENATOR JOHN GLENN

Mr. Chairman. I wish to express my appreciation for the work you and your staff have done in beginning to focus on the complex issue of counting undocumented aliens in the Decennial Census.

I am familiar with this subject because it came up in hearings I conducted as chairman of this subcommittee some 5 years ago pertaining to the results of the 1980 Census. At that time, of course, the primary problem concerned "undercounts", but we did touch on the issue of enumeration of illegal aliens.

The decision of whether to count or not count undocumented aliens is one ripe with controversy. It touches on fundamental Constitutional issues. Of particular interest to me, and certainly to my colleagues, are the political impacts such as reapportionment and redistricting, plus the principle of "one man, one vote". As I've indicated before, some States obviously benefit when Congressional apportionment is determined on the basis of total population count, illegal aliens included, while other States claim this results in an imbalance in Congressional representation.

I think anytime we deal with fundamental Constitutional issues, we must tread delicately. There has been an on-going debate over the constitutionality of any legislative provision affecting the counting of illegal aliens and this issue remains far from settled. However, I am interested to note that one of our witnesses here today, through precedential Supreme Court decisions, has provided his interpretation that restrictions on counting undocumented aliens would be constitutionally permissible.

Even if one assumes that these constitutional issues can be overcome, a far more pragmatic problem has to be dealt with. That is essentially the mechanics of operational and managerial procedures available to implement and enforce any such provision. I have a preliminary analysis from the Congressional Research Service made at my request which outlines possible operational approaches if it were decid-

ed to exclude undocumented aliens from the Census count.[1] The CRS report suggests three possible alternatives:

1. Exclude undocumented aliens from the census count by placing a notice on the questionnaire asking them not to complete it and instructing census workers not to include persons found to be undocumented aliens.

2. Include undocumented aliens in the census count but add a question that required them to identify themselves. Subsequently, remove them from the count used for the apportionment.

3. Do not change the field procedures but estimate the number of undocumented aliens counted in the census in each State and subtract that number from the State's count when apportionment is calculated.

While each of these methods has its distinctive advantages, each has its own inherent disadvantages. Certainly it may be possible to invent a more perfect means of accomplishing this objective. However, until we have reached that stage, it seems that each of the currently available methods has significant potential drawbacks.

Finally, during one of my prior hearings on this issue, the then-Director of the Census Bureau, Mr. Vincent P. Barraba, testified that there was no truly reliable means or procedure to either estimate the total number of illegal aliens, and further, to exclude those people from the census count itself. That statement was made in 1980. However, I note that in 1983, the Census Bureau, did, in fact, issue a study which was prepared by one of the witnesses here today, Mr. Jeff Passel, which broke down State-by-State those illegal aliens who were included in the 1980 Census. I am anxious to hear about the specific procedures involved in the compilations of this report and to find out what new developments occurred in this 3-year interim to enable the Census Bureau to produce this report.

I look forward to being present with you, Mr. Chairman, to hear the testimony today on this most important subject.

Senator COCHRAN. I want to welcome the witnesses and express my appreciation for your being here and for your cooperation with the subcommittee. We received your statements, which we have reviewed, and for which we thank you very sincerely.

Now, I invite Doris Meissner and Robert Warren to come to the witness table.

We appreciate your being here and giving us the benefit of your statement concerning the legal requirements for enumerating illegal aliens. We invite you to present your testimony. You may abbreviate the written remarks. All of your statement will be included at this point in the record as if it had been verbally stated.

Thank you for being here. You may proceed.

TESTIMONY OF DORIS MEISSNER, EXECUTIVE ASSOCIATION COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY ROBERT WARREN, ACTING DIRECTOR FOR STATISTICAL ANALYSIS

Mrs. MEISSNER. Thank you, Senator Cochran. On behalf of the Immigration and Naturalization Service, we are pleased to appear at this hearing, and in line with your suggestion, would ask that our testimony be admitted into the record, and I will briefly summarize.

I am accompanied by Robert Warren, who is, as you mentioned, the Acting Chief of our Statistical Analysis Branch and who will assist in answering questions as you ask them.

Our testimony addresses the history of and the current scope of illegal immigration into the United States. We are all proud, of course, of our heritage as a nation of immigrants. We continue to have an economic allure to people around the world, and the free-

[1] See p. 64.

doms and values that we enjoy are those that are hoped for by many people in many other countries. That means that we continue to draw people into this country, and we, of course, assume and hope that this draw will be through legal channels.

We are in a period of very high immigration into the United States. Immigration into the United States is as high for the last two decades or so as it was prior to World War I. So, we should be thinking of ourselves as being in period of time when immigration is on the upswing and will likely continue to be so.

But accompanying that legal immigration has been a very, very high incidence of illegal immigration. That, of course, is your concern in this hearing, and that is a very, very critical concern of the Immigration and Naturalization Service.

We apprehended last year over 1¼ million people, and that is an annual figure that has been established during the 1980's and is likely to continue.

This apprehension total represents activity. It doesn't represent individuals. Some individuals are apprehended more than once. Nonetheless, it is a dramatically high number, and it is a number that we see increasing every year. To give some comparison, 20 years ago, in 1965, we apprehended only 110,000 a year. So that is really a tenfold increase in 20 years and something that is of serious concern.

It is our view that absent some legislative relief to give more authority to the executive branch to deal with the problem that brings about illegal immigration, that this increase is simply going to continue into the foreseeable future.

You, of course, know that as we speak, the Senate is debating the issue of reform legislation. We want to express our appreciation to the leadership that the Senate has shown over the past several years in consistently passing legislation that we believe would help us. We hope it passes again this time, but in the specific, we hope that it passes the House so that we can move forward in implementing employer sanctions which, to us, are critical.

Nonetheless, we have a large and illegal immigrant group in the United States. Our present estimates are that there are 4 to 6 million people in the country here illegally. We break this total into a "permanent illegal immigration population" or "settlers" of about 3 to 4 million and then a moving group that is referred to as "commuters" or "sojourners" of about 1 to 2 million additional people.

The settler population is growing by about a quarter million a year, and it is unlikely to stop growing unless some positive actions are taken that will change it.

The estimates that I have given you are consistent with those that the Census Bureau has developed, and they are also consistent with the remarks that you made at the beginning of the hearing.

As far as the Census Bureau and the Immigration Service are concerned, we have worked very closely together on the issue of numbers of illegal aliens. It is important to us and to the Census Bureau to be as precise about this issue as we can be.

For the 1980 census, we shared some important information with the Census Bureau, which, in retrospect, I think, was very helpful to them in being able to come up with accurate estimates. We

would be happy to describe that methodology later if you wish to go into it.

But it is important to say that that cooperation and that kind of exchange of information is continuing, and we have been participating with the Census Bureau in their planning for the 1990 census.

In addition to the kind of assistance we were able to give for the 1980 census, we will probably be able to be considerably more helpful in the next several years, because our own ability to extract information from our information systems through a very aggressive automation effort has improved enormously.

We have a number of data bases that have important information in them about the number of immigrants coming into the country, for instance, the number of people naturalized, that is those who receive U.S. citizenship, that are important check points for the Census Bureau to use to evaluate data that they are developing. That kind of cooperation and that kind of exchange of information is going on and will increase as we get closer to the 1990 census.

So let me simply finish by saying that we believe from the point of view of overall numbers and the extent of the problem that the only thing that is really going to make any measurable difference is strong legislative solutions which we hope will be forthcoming from the Congress quite quickly.

In the interim, however, we are continuing to work with the Census Bureau and would foresee that cooperation will continue in the future as they go forward with the 1990 census to enumerate this population in the most effective fashion.

Thank you.

Senator COCHRAN. Thank you very much, Mrs. Meissner. Of the 3 to 4 million settlers, as you call them, who are in our country today and who are illegally here, how many do you expect will become citizens of the United States?

Mrs. MEISSNER. There would be very few who could become citizens unless some kind of a legalization program were enacted. Most of those people are in an illegal status and will remain in an illegal status unless there is some legislative relief that would allow them, through a legalization kind of approach, to gain a legal status.

Some portion of those people will, over time, marry U.S. citizens, in which case they would have a vehicle to enter the legal system. Some portion of them will have children in this country, and when those children grow up and become 21 years of age, the children having been born here could then confer permanent residence upon their parents. Additionally, some number could, through the right kind of job or job situation, perhaps apply under certain sections of the act for legal status. But all of those taken together still, I think, would add up to quite a small percentage of those actually entering the legal stream.

Senator COCHRAN. I have forgotten the number of those who would be affected by the amnesty provision of the bill that we have on the floor of the Senate today. What is that number, do you recall? How many would become legally here who are now illegally here if we enact the bill that is on the floor today?

Mrs. MEISSNER. We believe that at most 2 to 2.5 million, would be eligible to apply with a January 1980 eligibility date.

How many of those actually would apply will only be known by experience.

Senator COCHRAN. It is not an open-ended thing?

Mrs. MEISSNER. No, no, because the bill is written such that only people who enter prior to 1980 and remain would be able to apply, and a goodly proportion, in fact, the majority of the illegal alien population probably, as time goes on, entered since 1980.

Senator COCHRAN. There have been discussions from time to time in the Congress and in the courts about whether or not those who are citizens should be counted for the purpose of deciding how many seats in Congress should be allocated among the States.

Has your agency or has the Department, to your knowledge, taken a position on that one way or the other? I am not aware of any. I just wonder if you are.

Mrs. MEISSNER. No. We have no position, and I think it is very unlikely that we would have a position on that issue. Should the issue come forward in the frame of a lawsuit, then, of course, the Justice Department would defend the Government's position, but the Government's position would be developed in an agency other than the Justice Department.

Senator COCHRAN. There was a suit in 1980, I think, litigating the issue, and it was dismissed because the person who filed the suit was said by the court not to have standing in the suit. You didn't participate or INS didn't participate in that as such? I don't recall. As a friend of the court or anything, you didn't file a brief or take a position?

Mrs. MEISSNER. No, to my knowledge, it never got far enough to require that.

Senator COCHRAN. I appreciate your being a lead-off witness and putting in context the numbers that we are dealing with and what is at issue. I think the Census Bureau witnesses will be able to answer this question. Let me ask it of you. Do you have any records that would indicate where these 3 to 4 million or 6 million, as many as we might have, where they are? In other words, if we enacted legislation that said that you can't count, for the purpose of apportioning House seats, illegal aliens, what States would be affected? Do you have that information that you could share with us?

Mrs. MEISSNER. Well, we do. I think Census probably would wish to elaborate, but it is important to know that the illegal alien population is very disproportionately arranged. Basically, it is California, Texas, Florida, Illinois, and New York which are affected.

Almost half, as far as we know, of this population is in California.

Senator COCHRAN. You talked about the growth rate of the illegal aliens, and you put that number at 250,000 per year. What we are seeing, I guess, then, is that every 2 years, we get enough illegal aliens in the country to entitle a State to another Congressman. About 500,000 constituents make up a congressional district.

Mrs. MEISSNER. That is a correct extrapolation, but it is not really a fair representation of what would likely happen, because of a phenomenon called clustering, which is that illegal aliens go where legal aliens are. Under the pattern we presently see, the ille-

gal alien population is concentrated in about five States and mostly in California. These States are where the incremental increases would likely be in the future, as well.

Senator COCHRAN. You have been very helpful to the committee. We appreciate your being here and Mr. Warren being here to help us in our examination of this issue. Thank you very much.

Mrs. MEISSNER. Thank you very much.

[Mrs. Meissner's prepared statement follows:]

Department of Justice

STATEMENT

OF

DORIS MEISSNER
EXECUTIVE ASSOCIATE COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

THE

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION,
AND GOVERNMENT PROCESSES
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

LEGAL REQUIREMENTS FOR ENUMERATING ILLEGAL ALIENS

ON

SEPTEMBER 18, 1985

Chairman Cochran and members, of the Subcommittee on Energy, Nuclear Proliferation, and Government Processes

I am pleased to represent Commissioner Nelson in testifying concerning the history and current scope of the illegal alien problem in this country. I will also present our views about how this problem can be brought under control before the 1990 Census. I will be glad to provide whatever information that I can for your deliberations; however, I am aware that the complex legal and operational questions surrounding your topic are outside the perview of the Service. Therefore, my testimony will be brief. Mr. Robert Warren will be available to provide more detailed statistical information.

The conditions which have led to our present problems in immigration are neither new nor unusual. The United States has for many years presented an attractive way of life to people from much of the world. The individual freedoms of its residents and the opportunity to better one's place in life have encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation with all the benefits which people from every part of the world can enjoy.

The political freedom and economic opportunities available here have also led to a substantial flow of illegal aliens to this country, and indications are that the situation has been getting worse for some time. Again during the last fiscal year, the number of illegal aliens apprehended at the border increased. More than 5 million apprehensions have occurred since the 1980 census was done. Total apprehensions increased steadily from 110 thousand in 1965 to the present level of a million and a quarter each year. In the absence of effective new

legislation many more illegal aliens are likely to be in the United States in 1990.

The most widely accepted estimates of the illegal alien population at the present time are in the 4 to 6 million range, with permanent residents accounting for perhaps 3 to 4 million and other illegals estimated at between 1 to 2 million. The Census Bureau recently reported that the number of illegal residents was growing by nearly a quarter of a million each year in the early 1980's. At that rate, the population will double every 10 years; the problem will keep growing until positive action is taken to gain control over the entry and presence of aliens in our country.

Fortunately, a vital piece of legislation that we believe will restore control over immigration is presently before Congress. S 1200, the Immigration Reform and Control Act of 1985, is a multi-faceted approach to the variety of immigration problems that we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong and abiding commitments to the United States, and provisions whereby the legitimate needs of employers may be met.

Through the placing of sanctions on the knowing hiring of illegal aliens, the bill addresses one of the primary reasons aliens enter illegally or, after legal arrival, violate the conditions of their admission. In addition to effectively stemming the flow of illegal immigration, the bill recognizes the need to legalize aliens who have resided in our society for several years.

We believe that prompt passage of effective legislation can bring about a situation by 1990 in which the flow of illegal immigration is curtailed and those found to be eligible have been legalized. If so, the illegal alien

population could be reduced to a level where it would not pose a practical problem for the 1990 census. On the other hand, failure to enact legislation and provide the resources to support it will greatly add to future dollar and societal costs. The question of what to do about the millions of illegal aliens now included in the census total, although not specifically identified will be only one of many problems that will grow more acute if we fail to act.

Regardless of the outcome of pending legislation, we will continue to provide as much statistical information as possible about immigration to the Census Bureau and others interested in this important component of our population. In 1980 we provided detailed information about legal aliens and naturalized citizens that enabled the Bureau to estimate the total number of illegal aliens counted in the census. The estimates were done by subtracting estimates of the legally resident foreign-born population (citizens and aliens) from the census count of the foreign-born. The INS provided the detailed figures for both citizens and aliens used to estimate the legally resident population.

The INS also has participated in preliminary planning for the 1990 census. Following sample selection procedures set up by the Census Bureau, our district offices pulled information from a sample of files for recent immigrants so that the Bureau could test new methodology for estimating undercount in the 1990 census. Also, a member of the Statistics staff was co-chair of a Federal subcommittee on planning 1990 census questions on country of birth, citizenship and year of immigration.

During the next few years we will continue to implement our extensive plans for automated data processing. The timely and detailed information produced by the new systems will be useful for evaluating the 1990 census. For example, the number of immigrants admitted during the five years prior to the census is

extremely useful for estimating the number of illegal aliens counted in the census who entered during the previous 5 years. Also, the census data for the number of naturalized citizens for various periods of entry can be evaluated using INS statistics. In the 1980 census this comparison led to the conclusion that the Census Bureau's question on citizenship needed to be revised. Finally, the census count of foreign students by country of origin and residence in the U.S. can be compared to the information in the INS' automated foreign student data base. In addition to making more information available we will continue to share our insights into the process of immigration and continue to work with the Census Bureau and other groups interested in the impact of immigration on our society.

In summary, the United States has demonstrated in the past that it can control its borders when it is determined to do so. During the last twenty years the pressures to immigrate to this country have exceeded our legal limits, which are higher than those of any other country in the world.

The illegal alien population grew so rapidly in the 1970's that illegal immigration became a major problem facing the nation. The population grew so large that it is estimated that over two million illegal aliens were counted (although not individually identified), and millions more probably were not counted, in the 1980 census. Since 1980 the illegal population has grown at a rate that would cause it to double in less than 10 years.

The INS will continue to provide information to develop an effective immigration policy and assist the Census Bureau in preparing for the 1990 census.

If the pending Immigration Reform and Control Act is enacted this year we should be able to regain control of immigration to this country before the 1990 census. If so, the issue of whether to count illegal aliehs in the population used for apportionment would continue to be a legal question.

Senator COCHRAN. Let me now ask the witnesses from the Bureau of the Census, Dr. John Keane, who is here, to come forward. I will let you introduce those who are with you. We appreciate your being here and helping us understand the issues.

Welcome, Dr. Keane.

TESTIMONY OF JOHN KEANE, DIRECTOR, BUREAU OF THE CENSUS, ACCOMPANIED BY PETER BOUNPANE, ASSISTANT DIRECTOR FOR DEMOGRAPHIC CENSUSES, AND JEFF PASSEL, CHIEF, POPULATION ANALYSIS STAFF

Mr. KEANE. Thank you, Mr. Chairman. You have already identified them. I will just say that Mr. Bounpane is on my right and Dr. Passel is on my left.

We certainly share this committee's interest in the topic. With your permission, I would like to just give an oral overview.

Senator COCHRAN. Please do. We will include your entire statement in the record at this point.

Mr. KEANE. Let me divide my overview into three areas: The historical perspective; enumeration practices, especially in the 1980 census; and research that the Census Bureau has done to estimate undocumented aliens in the 1980 census.

Beginning with the historical perspective, the Constitution tells us to count the whole number of persons, essentially meaning those resident in the country. The issue, of course, has been debated within Congress in 1929, 1931, and 1940. One legal opinion of note is that of the Legislative Counsel's Office of the Senate, and that opinion concluded: "There is no constitutional authority for the enactment of legislation excluding aliens from enumeration for the purposes of apportionment of Representatives among the States."

And the courts have taken up the issue. The one that comes most to mind is fairly recent. In 1979, when the Federation of American Immigration Reform, commonly known as FAIR, filed a lawsuit seeking to exclude undocumented aliens from the 1980 apportionment counts, and the three-judge court found, "It—" meaning the Constitution, "—requires the counting of the whole number of persons for apportionment purposes," and illegal aliens are clearly persons.

So there we have a constitutional basis, a congressional legislative counsel opinion and a three-judge opinion in a lawsuit.

Going on to the second part of the overview, let me focus on enumeration practices. In connection with the 1980 census, we provided materials in 32 languages, as well as in English, of course, to facilitate that process. In connection with Spanish, questionnaires were readily available in that language. We hired enumerators with foreign language skills to further the effort.

We set up numerous assistance centers geographically dispersed around the country with printed telephone numbers on the questionnaires where people could be reminded and could get help in calling.

We convinced the Immigration and Naturalization Service to curtail its law enforcement activities around census day. We were also successful in getting numerous people engaged in testimonials and support from hispanic leaders and celebrities.

Then we hired special enumerators to canvass a variety of places other than housing units, including migrant camps.

The third part of my overview is the research into the area of undocumented aliens counted in the 1980 census. Without going into detail on the research, it was independent of the census. We used aggregate data sets. The net result of that effort is that we estimate that in 1980, we counted about 2 million undocumented aliens.

Just for illustrative purposes and I do not underline the word illustrative, we did an estimate of apportionment, excluding undocumented aliens. Without getting into details the methodology does have some shortcomings that affect the quality of apportionment estimates in our judgment. What would have happened is two States would have lost a seat and two other States would have gained a seat.

Summarizing, there are severe limitations, in our judgment, to using those estimates of undocumented aliens at the State level. One of the shortcomings is simply the reliance on sample data. Second is that the estimates took a long time to produce. In other words, we were not able to submit the estimates until 3 years after the data was due by law.

Finally, Doris Meissner mentioned that there was cooperation with the Immigration and Naturalization Service, and there surely was, which we welcomed. One of the aids that the INS gave us was the use of the alien registration data file. This file was essential in making our estimates. Unfortunately, such a file no longer exists, so that the same methodology would be valueless, presumably, in the future.

On balance, the apportionment formula requires data of acceptable quality for all States, not just a few with the large, undocumented alien populations. We have confronting us methodological difficulties. We have gaps in necessary data now because, as I mentioned, the INS file would not be available. Very likely, there would be operational difficulties in the field were we to design and implement a new methodology after all these years of taking the census essentially in the same way.

We, therefore, do not believe that these estimates should be used for apportionment. Thank you.

Senator COCHRAN. Are there statements to be made by any of your associates?

Mr. KEANE. No.

Senator COCHRAN. Dr. Keane, let me thank you again and express my appreciation for your statement and your cooperation with our committee.

I notice that one part of your statement includes some research findings. On page 11 of your prepared statement, you identify the places of residence for the over 2 million undocumented aliens which are estimated to be included in the 1980 census. Among those States listed are California, New York, Texas, Illinois, and Florida, where 81 percent of all of those undocumented aliens are said to reside.

Which of those States would end up losing representation in Congress if the 1980 census count separated illegals from citizens?

Mr. KEANE. New York and California.

Senator COCHRAN. So New York would lose one Member of Congress and California would lose one?

Mr. KEANE. Yes, and again I emphasize, if I may, that this was for illustrative purposes only. We are very uneasy with the data and the estimates that we had to make.

Senator COCHRAN. Which States, as a matter of curiosity, would have gained representation in Congress? You mentioned two States would gain a seat in Congress.

Mr. KEANE. Georgia and Indiana.

Senator COCHRAN. Georgia and Indiana. But it was in Indiana where they had this litigation, wasn't it, about whether or not undocumented aliens should have been counted for apportionment? Isn't that where they litigated that?

Mr. KEANE. There is a suit that has since been resolved.

Senator COCHRAN. Oh, I see. They filed a suit and they worked it out?

Mr. KEANE. If I recall correctly, the evidence was not sufficient for the judge to, I assume, admit the suit to a further stage.

Would you care to comment?

Mr. BOUNPANE. Senator, if I could clarify that a little, the Indiana suit was not on the issue of illegal aliens. Their suit was on a different issue, about an aspect of the enumeration when we make numerous calls to count persons and cannot find them at home. The question was whether we should use the computer procedures to count those persons. That issue has been resolved.

Senator COCHRAN. So they decided a computer was better or smarter than a person? [Laughter.]

The point is, there would be an impact on the representation of at least four States, if, in 1980, the law had required the Bureau to separate its count of illegals from citizens. That is your testimony?

Mr. KEANE. Under certain assumptions. Remember, our estimate is that we counted approximately 2 million undocumented aliens; but that is not necessarily our estimate for the number that are in the country.

Senator COCHRAN. The fact of the matter is, there are more than that in the country; there are more illegals than 2 million in the country, especially now, and even in 1980 there probably were; is that correct?

Mr. KEANE. The research that we have done to date would suggest that in 1980 there were somewhere between 2½ to 4 million undocumented aliens.

Senator COCHRAN. You mentioned several problems that would be encountered if the law required you to make some finding of numbers of illegals as compared to the numbers of citizens. I heard all of that. I am sure that there would be problems encountered. But it is not your testimony that it couldn't be done, is it?

Mr. KEANE. Certainly, at this point, with what we know and can do, it would be very difficult. I see at least three sets of major difficulties confronting us. One is the one you just alluded to; that is, we have never asked a question about legal status. How do you do it? How would you know a person is answering honestly? Does a person necessarily know if the individual is a legal immigrant or not? That might seem obvious, but it is not altogether obvious in all instances.

A second category of difficulties besetting us would be legal considerations. We have neither the expertise nor necessarily the responsibility, and perhaps Professor Noonan will elaborate on that. But at least to us, at this point, it is clear that it causes us to have reservations.

Finally, perhaps more importantly than the others, because it could be so risky, is the perceptual problem. Would the Census Bureau suffer were some kind of an approach such as this invoked? Would we suffer from perceptual problems? Would we be perceived perhaps as an enforcement agency? If so, what kind of harmful ruboff might that have on the amount and quality of cooperation people would give us in the 1990 census and thereafter?

If we were to breach that enviable level of cooperation which we get now, how would we recover in 1990? How would we compensate from their effort? Besides that, what ruboff might it have outside of the decennial census? After all, we have about 250 surveys annually that we do and 3 other major censuses.

Overall, that is descriptive of why we are so careful and want to be so cautious in that general area.

Senator COCHRAN. I understand that we are seeing a growth in the number of illegals; according to the INS testimony, a growth rate of some 250,000 aliens per year. Do you agree with that estimate of the growth rate of the population of the illegal aliens that we are witnessing?

Mr. KEANE. That is within our range, although it is on the high side. Our range for the 3 years 1980 through 1982, is that on the average the net annual increase would be somewhere between 100,000 and 300,000.

Senator COCHRAN. Assuming that we would have the average 200,000 a year, then over time, that grows into millions, and by the 1990 census, we could have as many as 4 million additional illegal residents of the United States being counted in that census. Assuming 500,000 persons per Congressman, instead of just two States gaining a seat in Congress or two States losing a seat in Congress, we could see many others affected.

Would you agree that it is likely that we could, by 1990, have 4 to 5 million more illegal aliens counted for the purpose of apportioning the House of Representatives?

Mr. KEANE. I would agree that is a possibility. I don't necessarily think that it would be a likelihood. It depends on what assumptions you make.

Senator COCHRAN. The assumption is that the current growth rate would continue. Is that an accurate assumption? Is that based on facts that we do have?

Mr. KEANE. If it were, say, at the low end of our range, 100,000, as opposed to at the high end, that would make quite a difference in the number of them over that time. Surely it is, it seems to me, a reasonable conclusion to come to that if the current rate continues, without pinpointing that for the moment, that there would be quite a few more, and were we to invoke some kind of a new apportionment system, that there would be some consequential impacts.

Senator COCHRAN. We would have more States affected, would we not?

Mr. KEANE. Well, I don't know. The concentration might continue; as you pointed out, 81 percent in five States. Even within those States, for instance, Los Angeles County had, according to our research, one-third of all the undocumented aliens in the country.

So the concentrations are geographically high. Unless there were quite a departure in that pattern, I don't know that so many States would be affected.

Would you care to elaborate, Mr. Passel.

Mr. PASSEL. The apportionment formula is a funny formula. It is very sensitive to small numbers, right around the 435th seat. It is very difficult to predict what States would be affected and how many.

It is difficult to do that without knowing what the populations were going to be in 1990. It would have been hard to predict in advance, for instance, the particular States in 1980 would have been the ones to gain or lose.

If there are more undocumented aliens, it is possible that more States could be affected. It is also possible that the same or fewer States could be affected, depending on exactly where the undocumented aliens are and exactly what the populations of all 50 States are and how they rank out with the apportionment formula. But it could, indeed, be more. But it could be fewer, as well.

Senator COCHRAN. In a hearing we held earlier this year, we talked about problems in taking the census in other countries and how the lack of confidence or support among the population made it very difficult in some countries to get an accurate counting of people within the country.

I wonder if, in your dialog and communication with others around the world, you could tell us, do they count persons who are inhabitants for the purposes of apportioning seats in Parliament in Great Britain, or do they count those who can vote?

Mr. BOUNPANE. Senator, I don't think we know the answer to that. We would be glad to try and find out and submit that to you for the record.

Senator COCHRAN. Yes, I would like to know, if you know. I guess I could call them up and ask them. [Laughter.]

I thought maybe you might know. It just occurred to me that I wonder whether other countries that have representation in a central government count people who are passing through or who are legally residing there for the purpose of deciding how many representatives should be in the Parliament.

Mr. KEANE. We will take that as an assignment because you asked and because you pigued my curiosity, too.

Senator COCHRAN. I am curious. It would be interesting to know the answer to that.

[The information referred to follows:]

There are very few countries that use census data for representation purposes. England, Wales, and Australia use census figures for representation, but adjust the figures for underenumeration. Most countries count everyone and ask questions on citizenship, when did the individual come to the country, where the individual resided five years previously, and whether the individual is in the country as a representative of a foreign government (diplomat) or a member of a foreign military service stationed in the country. In general, other countries do not exclude "illegal" or sojourner aliens in their census counts.

Senator COCHRAN. I appreciate your being here and helping us look at the issue. I thank you for helping the committee in the way that you have.

[Mr. Keane's prepared statement follows:]

STATEMENT OF THE DIRECTOR OF THE BUREAU OF THE CENSUS
John G. Keane
Before the Subcommittee on Energy, Nuclear Proliferation,
and Government Processes
Committee on Governmental Affairs
U.S. Senate
September 18, 1985

The Census Bureau welcomes this opportunity to discuss the enumeration of undocumented aliens in decennial censuses. I am accompanied by Mr. Peter Bounpane, the Assistant Director for Demographic Censuses, and Dr. Jeffrey Passel of the Population Division.

I shall provide a historical perspective on why we include undocumented aliens in the census, discuss how we enumerate them, and comment on our research to estimate the number of undocumented aliens counted in the 1980 census.

HISTORICAL PERSPECTIVE

The Constitution

Article 1, Section 2, of the Constitution, as amended by the Fourteenth Amendment, specifically provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." The Constitution gives to the Congress the authority to direct the manner in which the census is conducted. The Congress has directed the Secretary of Commerce to conduct the census and the Secretary has delegated that authority to the Census Bureau.

Traditional understanding of the Constitution and the legal direction provided by the Congress has meant that for every census since the first one in 1790, we have tried to count residents of the country, regardless of their status.

It is the phrase "whole number of persons" that has generally guided decisions as to who should be included in the census count for apportionment.

From 1790 to the present, Congress has recognized that the total population, regardless of legal status, was to be included in the decennial census. The First Decennial Census Act, adopted in 1790, says: "Be it enacted, that every person whose usual place of abode shall be in any family on the aforesaid first Monday in August next shall be returned as of such family." Although the wording varied over the decades, the concept remained the same--to enumerate all of the inhabitants. The current wording, "the tabulation of the total population by States," was contained in the amendment to Title 13 of the United States Code passed by Congress on June 18, 1929.[1/] The Census Bureau has never sought to count separately the number of undocumented aliens in the United States as a discrete group or to differentiate respondents in any way based on legality of residence in the United States.

The Congress

The Congress has debated the inclusion of aliens for apportionment purposes several times. In 1929, Senator Arthur H. Vandenberg included in the record a legal opinion provided by the Legislative Counsel's Office of the Senate. This opinion concluded that "there is no constitutional authority for the enactment of legislation excluding aliens from enumeration for the purposes of apportionment of Representatives among the States." This opinion also says that "persons" as used in the Constitution includes aliens as well as citizens.[2/] During the 1931 debates in Congress on the same subject, this legal opinion was again included in the record of the hearings.

1/ 46 Stat. 21
2/ 71 Cong. Rec. pp. 1821-1822 (1929)

During a discussion in April 1940 on the floor of the House on the inclusion of aliens, the subject of "illegal" aliens was raised explicitly. Asked whether "aliens who are in this country in violation of law have the right to be counted and represented," Congressman Emanuel Celler responded: "The Constitution says that all persons shall be counted. I cannot quarrel with the founding fathers. They said that all should be counted. We count the convicts who are just as dangerous and just as bad as the Communists or as the Nazis, as those aliens here illegally, and I would not come here and have the temerity to say that the convicts shall be excluded, if the founding fathers say they shall be included. The only way we can exclude them would be to pass a constitutional amendment." 3/

The Courts

In 1964, the Supreme Court addressed the requirement that apportionment of the House of Representatives was to be based on total inhabitants. "The debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people' they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants. The Constitution embodied Edmund Randolph's proposal for a periodic census to ensure 'fair representation of the people,' an idea endorsed by Mason as assuring that 'number of inhabitants' should always be the measure of representation in the House of Representatives." 4/

The most recent review of this issue occurred in connection with the 1980 census. In 1979, the Federation for American Immigration Reform (FAIR) filed a lawsuit

3/ 86 Cong. Rec. 4372 (1940)
4/ Wesberry v. Sanders, 376 U.S. 1, 13 (1964).

against the Census Bureau seeking to exclude undocumented aliens from the 1980 census apportionment counts. The plaintiffs argued that including undocumented aliens in the population base for apportionment defeated the purpose of apportionment, that is, equal representation for equal numbers of "people of the United States."

In defending the Census Bureau, the Government's attorneys argued that the Constitution requires that all persons be included. The legal argument centered on the wording of the Constitution, which specifies persons as the basis for apportionment, without distingushing among inhabitants other than Indians not taxed and slaves.

The Three-Judge District Court that heard the FAIR case decided the lawsuit on procedural grounds (lack of standing). However, the court also addressed the substance of the case. They said: "It [the Constitution] requires the counting of the 'whole number of persons' for apportionment purposes, and while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly 'persons'." 5/ The appellate court affirmed the opinion; the Supreme Court denied plaintiffs' request to review the decision.

ENUMERATION PRACTICES

Census Planning

The Census Bureau discusses its plans with the Congress before every decennial census. From May 1974 until January 1980, Congress held 16 hearings on the plans for the 1980 census. In the September 1976 hearings, Census Bureau officials testified on the procedures on whom to count and where to count them. The Census Bureau refers to these procedures as "rules of residence."

5/ D.C.D.C. (1980) 486 F. Supp. 564

They have remained virtually unchanged since the 1790 census, that is, to count every person who is a resident at his/her usual place of residence. There have been only small changes in interpretation, and these changes mainly did not involve the "who" but rather the "where." Consistent with the interpretation of the Constitution and the law, the procedures have always provided that a citizen of a foreign country living in the United States is to be enumerated.

In addition, the Census Bureau is guided by practical considerations. If the Census Bureau were directed to enumerate undocumented aliens separately in order to remove them from the apportionment count, we would run the risk of being perceived as an enforcement agency. Most likely such a perception would occur among those respondents who could suffer injury as a result of being identified as undocumented aliens. This, in turn, could have a major effect on the cooperation we receive, not only from this segment of the population, but from the population at large. In a free society, we are entirely dependent upon respondent cooperation. The Census Bureau goes to great lengths to avoid misperceptions that could adversely affect that cooperation. We must convince the population that it is safe to be included in the census. For those who are undocumented aliens, we must assure them that we will not turn their names over to the Immigration and Naturalization Service, and that they will not be deported as a result of responding to the census.

As a practical matter, the rules for counting people must be kept simple and must be understood readily by our enumerators. Determining the legal status of aliens is not simple at all in many instances, and involves legal considerations on which

the Census Bureau has no expertise and for which responsibilities are given by law to other Federal agencies.

Another consideration to keep in mind is that if we are required to exclude undocumented aliens, we would need to ask additional questions on a 100-percent basis.

Previous Censuses

The next section describes the Census Bureau's efforts to improve coverage in the 1980 census for all residents, including undocumented aliens. Here we provide the background that led up to these efforts.

The Census Bureau has always attempted to count every person residing in each state or territory on census day. Foreign diplomatic personnel living on embassy grounds (living on foreign soil and thus not in a state) and foreign tourists (who do not reside here) have been excluded as nonresidents. Americans living overseas are excluded, but those traveling overseas on business or vacation are included.

The decennial census population count represents the most precise person-by-person count achievable in this country within existing resources. Contact is made with every known housing unit identified by the Census Bureau, either by mail or in person. Using special procedures and forms, census takers enumerate individuals who do not live in housing units where they are found. Admittedly, the census is not perfect. Some housing units and people are missed. Each census, however, tries to achieve a better count than the one before.

Following the 1950, 1960, and 1970 censuses, the Census Bureau prepared, and announced publicly, estimates of the undercount. The published estimates of the percent of the population that was missed in 1950, 1960, and 1970 are

3.3, 2.7, and 2.5, respectively. While these percentages are relatively small, the Census Bureau recognized that the estimated undercount was not uniform for all segments of the population. Some demographic and geographic segments of the population had undercount rates that substantially exceeded the rates estimated for other segments. Because of these variations in the undercount rates, the Census Bureau focused considerable attention on minimizing any differential counting in the 1980 census.

1980 Census--Precensus Activities

For the 1980 census, the Census Bureau developed numerous procedures to improve coverage and reduce the undercount. Procedures that were successful in the 1970 census for reducing the undercount were extended in 1980 to cover more areas. Innovative techniques, based on successful tests during the decade, were incorporated into the 1980 census. In an effort to obtain maximum public cooperation, the 1980 census also included the most extensive census promotional/advertising/public relations campaign we have ever used.

Some special programs were designed specifically for certain racial and ethnic populations to help reduce any coverage differential between these groups and the rest of the population. While we undertook programs directed at these groups, the purpose was to increase cooperation overall, not just for specific groups such as undocumented aliens.

These programs apparently were successful in reducing the undercount. Our research shows that coverage of the 1980 census was significantly improved over the 1970 census.

1980 Census Enumeration

During the 1970s, many legal immigrants from Asia and Latin America came to this country. It is generally assumed that the number of undocumented aliens also

increased during this period. To aid in the enumeration of this diverse population, we provided census materials in languages other than English in the 1980 census. A message in Spanish on the regular census questionnaires informed Spanish-speaking householders that they could obtain a Spanish language questionnaire either by marking a box on the questionnaire and mailing it back or by telephoning the census district office. Followup enumerators also were given Spanish-language questionnaires. There were special translations of the questionnaire into 32 other languages to use as respondents required. Whenever possible, we hired enumerators with language skills to work in selected areas where we knew a language other than English was routinely spoken. We also set up walk-in assistance centers in some areas with large numbers of non-English speaking persons.

To help people who did not understand how to fill out their questionnaires, the Census Bureau established questionnaire assistance telephone lines and printed the telephone numbers on the questionnaires.

Because undocumented aliens have particular reasons for wanting to remain anonymous, the Census Bureau took special steps to convince this group that the census is confidential and that no harm could come to anyone by answering the census. We successfully convinced the Immigration and Naturalization Service (INS) to curtail its law enforcement activities around Census Day in most areas where there were large numbers of undocumented aliens. This was necessary because INS arrests around census time could have been perceived as a cooperative effort between INS and the Census Bureau. We also obtained testimonials and support from Hispanic leaders and celebrities who encouraged undocumented aliens to answer the census. Although our attempt to get the Conference of Catholic Bishops to publicly support the census was unsuccessful, many Bishops and local Catholic clergy

individually encouraged their parishioners, many of whom may have been undocumented aliens, to answer the census.

As mentioned, we also hired enumerators to canvass a variety of places other than housing units where people reside. Counts were made of people living in group quarters such as nursing homes, prisons, hospitals, dormitories, fraternity or sorority houses, halfway houses, and rooming or boarding houses. We also canvassed hotels and motels, missions, flophouses, bus depots, railway stations and other places where people were known to spend the night. In major urban areas, we visited places where transient persons congregate such as employment offices, pool halls, and street corners.

These special enumerators also enumerated migrant farm camps, where we might expect some undocumented aliens to reside. Migrant camps included temporary living quarters for transient agricultural workers (such as pickers, harvesters, and cultivators) as well as temporary living quarters for persons employed at logging camps, fisheries, and so forth.

The only significant procedural difference between the 1970 and 1980 censuses regarding the enumeration of migrant camps concerned those in the migrant camp who listed their usual residence as elsewhere. In 1970, persons living in migrant camps at the time of the census were not asked about usual residence and were counted as residents of the area where the camp was located. In 1980, persons in migrant camps were allowed to provide a usual residence other than the camp. If they did they were counted in the census at the place they called their usual residence. Very few persons in migrant camps listed another address, so the 1980 process was basically the same as 1970.

No specific coverage improvement program was directed toward undocumented aliens. Rather all such programs were directed toward improving the coverage of all residents of the United States.

UNDOCUMENTED ALIENS COUNTED IN THE 1980 CENSUS

Research Program

The Census Bureau's increased interest in the undocumented alien population developed primarily as a result of our efforts to measure census coverage through demographic analysis. This demographic analysis involves constructing an estimate of the total population of the United States from data sources essentially independent of the census and then comparing the estimate to the census count. The components used to estimate the total population are births, deaths, emigration, and immigration, including undocumented immigration.

In developing estimates of coverage with demographic analysis, it would have been preferable to include estimates of the total number of undocumented aliens residing in the United States in the independent population estimates. However, since definitive estimates were not available for the total undocumented alien population, an alternative procedure had to be considered. The estimated number of undocumented aliens included in the census was first estimated and subtracted from the census count. Thus, undocumented aliens would not be included in either the census count or the independent population estimates. The resulting comparison would produce estimates of census coverage for the legally resident population in the 1980 census.

Through their research efforts, Census Bureau demographers have estimated the number of undocumented aliens counted in the 1980 census. The estimates were not made by attempting to ascertain the legal status of individuals.

Rather, they were made by comparison of statistical aggregates. We subtracted an estimate of aliens residing in the country legally, developed primarily with INS data, from an estimate of all aliens counted in the 1980 census. The difference between the two is assumed to represent undocumented aliens included in the 1980 census. Census figures for the alien population come from the sample phase of the census. The sample questionnaire, distributed to about 19 percent of the population, included questions on country of birth, citizenship, and year of immigration.

Before the final estimates could be produced, the data had to be corrected for known deficiencies in the 1980 census figures on aliens enumerated as well as the INS figures on aliens registered in the 1980 Alien Registration Program. The census data required adjustment for misreporting of citizenship status as naturalized citizens, failure to report country of birth, and misreporting of nativity. The INS data required adjustment for underregistration and had to be updated to include the aliens entering between the registration period, January 1980, and Census Day, April 1, 1980.

Research Findings

The Census Bureau research just described led to an estimate of 2,057,000 undocumented aliens counted in the 1980 census. Subsequent work has allowed us to subdivide the national estimates to provide estimates of undocumented aliens counted in the 1980 census for each of the 50 states and the District of Columbia. Of the 2,057,000 undocumented aliens estimated to be included in the 1980 census, over 80 percent reside in 5 states:

California	1,024,000	(50%)	
New York	234,000	(11%)	
Texas	186,000	(9%)	81%
Illinois	135,000	(7%)	
Florida	80,000	(4%)	

Of the remaining states, 33 had fewer than 10,000 undocumented aliens in the 1980 census. In many, the number was near zero.

Illustrative Effect on Apportionment and Limitations

For illustrative purposes, we subtracted these estimates of undocumented aliens counted in each state from the 1980 census counts of the total population used for apportionment. We then used the resulting estimate of legal residents in each state to compute an alternative apportionment.

In considering this alternative apportionment, certain assumptions made in the development of the state estimates of undocumented aliens and their potential effects should be made explicit. In terms of the quality of the estimates, the most relevant assumptions are related to the fact that the various data adjustments described earlier were available at the national level only. No state-specific data were available so that there was no basis for adjusting differentially among the states for misreporting of citizenship and nativity in the census and for underregistration in the INS data. We do not expect the assumptions used to be exact because there are certainly differences among the states in these various factors. Because of the variation among states and several other factors which could not be taken into account explicitly, the estimates of undocumented aliens counted in the 1980 census for states must be viewed as approximations.

This alternative apportionment differs from that provided to Congress on January 1, 1981. Two states would gain a seat. Two other states would lose a seat. Unfortunately, the method used to apportion Representatives among the states can be extremely sensitive to rather small differences, in large states

as well as small. For example, if the largest state estimate of undocumented aliens were changed by only 6 percent, then that state would lose an additional seat. Shifts of only a few thousand undocumented aliens counted in the census for any of three states estimated to have a small undocumented alien population could shift a seat for any of the three.

There are a number of other features of the method used to estimate undocumented aliens counted in the 1980 census that would limit the utility of such estimates for apportionment purposes. First, the estimates are based on sample data from the census, rather than data collected on a 100-percent basis. Also, the estimates of undocumented aliens made for the 1980 census were not completed until 1984, nearly 3 years after the date required for apportionment. Even more important for 1990, however, the data set which enabled us to produce subnational estimates--the INS Alien Registration Data--no longer exists; the program was canceled after 1981. Thus, we no longer have a methodology that would enable us to produce estimates of undocumented aliens counted in the 1990 census for states.

The Census Bureau plans to continue its research on undocumented immigration. Not only is this research valuable in its own right, but these estimates are crucial to us for measuring total immigration to the United States.

CONCLUSION

In closing, I would like to reiterate that the Constitution requires that we enumerate residents. Even if the Congress and the states were to change this requirement, technical and practical considerations must be addressed. We would be required to ask every person a citizenship question, and then determine the legal status of each one. This involves legal considerations for which the

Census Bureau has neither expertise nor responsibility. Furthermore, the Census Bureau could be perceived as an enforcement agency, and this could have a major effect on census coverage.

In addition, the estimates of undocumented aliens counted in the 1980 census for states have serious limitations for use in determining Congressional apportionment. They have been a valuable source of information on this difficult-to-measure population, particularly for states with large numbers of undocumented aliens. However, the apportionment formula requires data of acceptable quality for all states, not just the few with large undocumented alien populations. We, therefore, do not believe that these estimates should be used for apportionment purposes.

Thank you for the opportunity to appear before you today. My colleagues and I will be pleased to answer any questions.

Senator COCHRAN. We will now have before the committee John Noonan, who is professor of law at the University of California at Berkeley. We have a very fine detailed analysis of the legal issues surrounding this question, which has been prepared by Professor Noonan.

We thank you for that and ask you to make any kind of an oral presentation that you see fit to the committee. Thank you for helping us.

TESTIMONY OF PROF. JOHN NOONAN, UNIVERSITY OF CALIFORNIA SCHOOL OF LAW, BERKELEY, CA

Mr. NOONAN. Thank you, Mr. Chairman. It is a pleasure to be here and to offer what enlightenment I can. I think I should state for the record that I am here at the invitation of the committee; that the only instructions I received were to look at this question as a fresh question and to come up with the best answer I could, whichever way that answer fell.

As you know, in my written statement, I go through the arguments pro and con on the question: Does Congress have the power to exclude illegal aliens from being counted for purposes of determining representation in the House? In this overall presentation now, I should like to summarize the arguments both ways and my answers to one set of arguments, because I now do have a position.

I began with the argument in the negative, that Congress does not have the power. I start with the district court decision, *FAIR* v. *Klutznick* that the Director of the Census referred to, and then there is an actual holding in the *Young* v. *Klutznick*, district court decision. I don't think either one of those cases is responsive to the question, because neither one of them dealt with the exercise of congressional power. So, although they are of some interest, they are essentially dicta, both in the *FAIR* case where the district court case was overruled, and in the *Young* case: They don't respond to the exercise of congressional powers. They are not determinative.

Then we come on the negative side to the practice of the Census Bureau. I think it is fair to say that in any understanding of our Constitution, practice is of considerable importance. Clearly, the Census Bureau has thought it right to count aliens of all description. However, when we look at why this count goes on, we see that the Census Bureau is influenced by certain interpretations of the Constitution. It really isn't an independent practice. It is a practice influenced by, dependent upon certain interpretations of the Constitution.

I would say at first blush it looks as though there is a case here to be made for what the Census Bureau does. It is certainly true that article 1, section 2 speaks of "number of persons," "whole number of persons," "actual enumeration;" and the 14th amendment, section 2 also uses "number" and "whole number." Whenever you talk about numbers, I suppose you think of counting and what you are supposed to count: persons.

That is plausible, but I think most people who have had anything to do with the constitution realize that rarely is the blindly literal interpretation the correct one. Certainly, the Census Bureau itself

doesn't take it quite literally, because they don't count foreign diplomats and embassies, and they don't count foreign travelers if they are in a hotel. They really shifted from the literal word in the Constitution to another term that isn't there at all: residents. So I don't find that they are actually following the text.

I do see, particularly in the litigation that was engaged in over the Census practice in 1980, that there has been a lot of citation of Supreme Court decisions going back as far as *Yo Wick* v. *Hopkins* on section 1 of the 14th amendment, which says that aliens are persons for purposes of section 1. I think there was a natural spillover argument that that affects how section 2 should be read.

But, of course, section 1 and section 2 are different. Section 1 persons, ever since 1888, have included corporations. I don't think anybody has supposed that the Bureau of the Census should go around counting corporations because they are persons. The section 1 reading is not going to transfer to section 2 in that case. Similarly, I suppose if the situation ever obtained that there was a foreign army on our soil, I doubt very much that the Bureau would take it literally and count the troops by flying over them so that we could get all the residents in the country. [Laughter.]

I think we are asked to do something more than just take the literal meaning of the terms.

I think a fairly strong argument for what is the practice is there is some sense of fairness; that where there are a lot of aliens, there are a lot of governmental burdens, and some how, those areas ought to have representation in Congress because they are going to have to provide a lot of governmental services.

I think that is a beguiling argument, but not a persuasive one. It is not the way we have representation in Congress. It is not the principle of our Government that representation depends on the burden of a particular area. Representation depends on the persons that are counted, so it is begging to question to say: Well, we should do it by burden.

Finally, I would say probably the strongest argument for the negative is the intention of the framers of the 14th amendment. I don't think there is much doubt that the canny Senators and Congressmen from the Northeast wanted a formula that would help them, in the Northeast have more women than the West and more aliens than in the South or the West, and it was obviously to the interest of the Northeast that "persons" be taken in the broadest sense possible.

That intention is something we ought to respect, if we can. But I think there are two things to be said about it. One is that the problem of the illegal alien was not present in the minds of the framers of the 14th amendment. They just did not categorize aliens in those terms.

Second, ever since *Wesberry* v. *Sanders*, it is not the 14th amendment that is controlling here, but article 1, section 2, and that answers that question in a way that prohibits the interpretation that would give weight to the intention of the framers of the 14th amendment.

Moving to the affirmative side, I would say Congress has five powers that bear upon direction to the Census Bureau. First of all, in article 1, section 2 itself. The census is to be done "in such

manner as they (the Congress) direct." I don't think any of those words are surpluseage. I think they must be given a content. They mean that it is not for the courts to say, it is not for the executive branch, it is not for technical experts to say. It is for Congress to direct the manner in which the census is taken.

Second, there is the section 5 of the 14th amendment, which gives Congress the power to enforce, "by appropriate legislation," the entire article. The Supreme Court, in *Katzenbach* v. *Morgan*, has interpreted that language to mean that Congress has a distinct grant of legislative power to enforce all of the 14th amendment by appropriate legislation.

On top of those basic powers, there are the powers of article 1, by which Congress can regulate commerce with foreign nations and can establish uniform rules of naturalization, two powers that obviously give Congress great latitude as to all aliens.

Finally, although it is a perhaps strong argument to evoke, I think that article 4 is not irrelevant in its requirement that the United States guarantee" a republican form of Government' and protect against "invasion."

The Supreme Court has drawn a firm line between treating aliens for purposes of economic benefit and for purposes of political function. Addressing itself mainly to the States, the Court has imposed certain requirements on the States as to economic benefits given aliens. But as to political function, it says the States may treat aliens differently.

To quote Justice White in the *Cabell* case, "The exclusion of aliens from governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of self-definition." As he went on to say, "By definition, aliens are outside the political community." Well, if the States can draw that line, I am sure Congress can draw it, exercising the several powers to which I have referred.

The decisive argument, I believe, is that under *Wesberry* v. *Sanders*, Congress should draw the line. The teaching of *Wesberry* v. *Sanders*, is that it is unconstitutional to dilute votes in congressional elections. That violates the provision in article 1, section 2 that the House be elected "by the People," and clearly, if you take a fantastic case, you could have a rotten borough situation in which 10 voters and 500,000 illegal aliens constituted a congressional district. The 10 voters would have very valuable votes.

If you take a more realistic case, where there may be 50,000 illegal aliens in the county, still, those who vote there have more valuable votes than those in the rest of the State, and the dilution is not only between the States, it is within the State, as in the case of California. I don't believe the Census Bureau testimony touched on that dilution within the State. I think the courts, if they had the *Wesberry* argument put squarely before them, might do this exclusion themselves. But without putting it to the courts, Congress, in the exercise of the powers already given by the Constitution, should carry out the constitutional mandate to prevent the dilution of votes by illegal aliens.

Senator COCHRAN. Professor Noonan, I appreciate so much your taking the time and making the effort to give us the benefit of your

expertise in this area, looking at the law, the cases, the Constitution.

I have had the notion, and it has been no more than a notion, I suppose, that Congress ought to be able to legislate in this area without having to go to the extreme or amending the Constitution. But I couldn't find any easily reachable authority for that, other than my own inate sense of fairness and good judgment and that kind of thing. [Laughter.]

I appreciate the work that you have done in coming up with this analysis for us. I guess to put it in a sentence, it is your judgment, based on your review of the law, that Congress does have the power to exclude aliens or to direct the exclusion of aliens for the purpose of apportioning seats in the U.S. House of Representatives.

Mr. NOONAN. Yes, Mr. Chairman, that is my conclusion.

Senator COCHRAN. I know that we are going to see a continuation of debate in this area, because the Judiciary Committee not only has reported out this bill of immigration reform, but I understand that others on that committee are considering offering a resolution to amend the Constitution to more clearly define the view of Congress in this area.

But I have in mind introducing a bill which would direct the Bureau of Census to differentiate between illegal aliens, those not entitled to vote, and citizens, for the purpose of counting those on whose presence the apportionment of seats depends.

I wonder what your reaction would be to a bill; whether or not you feel that it would be legally sufficient to effect a change in the law if it is short of constitutional amendment on the subject that simply directs; the operative phrase here would be. "That the Secretary should make such adjustments in total population figures as may be necessary using such methods and procedures as the Secretary determines appropriate in order that aliens in the United States in violation of the immigration laws shall not be counted in tabulating population for purposes of Subsection (b) of this section."

Subsection (b) is simply the typical statute. It just simply describes apportionment of the seats of the House of Representatives.

What would be your view of the legal effect or efficacy of that?

Mr. NOONAN. I believe that would be a fully constitutional exercise of the several powers that Congress has to correct the manner in which the census will be taken for these purposes.

I think I might add that it is clear that an important consideration is that that bill would be aimed at the political function of representation and not get into the question of economic benefits, which is a different area and I suppose is one where people are very sensitive towards any improper discrimination. But this bill is relating to an area where the community is defining itself by leaving out those who illegally are here.

Senator COCHRAN. That is consistent with my attitude about the legislation that I am contemplating introducing. We have debated in the course of considering the immigration reform bill allocation of resources and responsibilities of states as compared with the Federal Government toward the alien population; those undocumented aliens who are in this country.

I think we are sorting through those issues in a sensitive and fair way, and this is a separate issue completely, in my view, and it is our attitude in this Subcommittee to focus narrowly on the issue of apportioning seats in the House of Representatives.

So this hearing today is for the purpose of looking at that, both from the practical consequences, what problems would we run into if the law were changed to require this differentiation, this separate counting, as it were. We realize there would be some difficulties in counting, and we will look at that further and consider it further.

I deeply appreciate your being here. Rather than embarking on sort of a session of just discussing all the reasons for your conclusion, I think you very generously gave us your time and the benefit of your analysis looking at specific cases; tracing the development of those cases over time. It was interesting, I think, to look at the Constitution as a whole in bringing up article 4, for example, as an additional basis for the conclusion that was reached. The *Matthews* case, those others which were discussed, leads me to share your conclusion that Congress does have the power, and not just the power, but the responsibility to legislate in this area.

Thank you very much for being here, and again, we express our appreciation for your hard work and your help to us in our hearings, all of the witnesses. Thank you very much.

Mr. NOONAN. Thank you.

[Mr. Noonan's prepared statement follows:]

TESTIMONY

OF JOHN T. NOONAN, JR.

PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY

BEFORE

SUBCOMMITTEE ON ENERGY, NUCLEAR

PROLIFERATION, AND GOVERNMENT PROCESSES,

COMMITTEE ON GOVERNMENTAL AFFAIRS,

UNITED STATES SENATE

SEPTEMBER 18, 1985

ACTUAL ENUMERATION OF THE ALIEN

Has Congress the power to exclude aliens unlawfully within the country from the "actual Enumeration" of persons upon whom the Constitution prescribes that representation shall be based?

I. Arguments in the Negative.

Three principal arguments deny Congress the power to exclude aliens who are in the country in violation of law from enumeration for the purpose of determining representation in the House of Representatives.

1. The text of the Constitution. The Constitution, Article I, section 2 declares:

> Representation and direct taxes shall be apportioned among the several States which may be included within this Union, according to their representative Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Servitude for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten Years, in such manner as they shall by law direct. (Italics supplied)

The Constitution speaks twice of "Numbers" and once of "Enumeration" without any qualifications as to those to be counted, except for the untaxed Indians and the "other Persons," slaves, who are counted at three-fifths. The "whole number of free Persons" appears to include aliens, legally or illegally within the United States.

The Fourteenth Amendment, section 2, removing the reference to slaves, has not altered the basic emphasis on numbers:

> Representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed....(Italics supplied)

The text again makes an exception that emphasizes the otherwise inclusive nature of the enumeration. Moreover, there is provision for reduction of the representation in proportion to the number of male adult citizens who are denied the vote, but no provision for reduction because of other voteless persons in a state. It is plain that the Constitution contemplated that the voteless would be counted--women, before the Nineteenth Amendment; children of every age; prisoners; and aliens.

2. The Analogy of Decisions and Dicta of the Supreme Court of the United States. The Supreme Court has decided cases bearing on the rights of aliens, and in the course of doing so, has created analogies and issued dicta that point to the conclusion that for most purposes of constitutional law all aliens must be counted as "persons."

In Yo Wick v. Hopkins 118 U.S. 356, 369 (1886), enforcing the due process and equal protection clauses of the Fourteenth Amendment on behalf of lawfully-resident aliens, the Court said:

> These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.

If "persons" under section 1 of the Fourteenth Amendment includes everyone without regard to "any differences...of nationality," it is reasonable to believe that "persons" in section 2 of the Fourteenth Amendment includes everyone without regard to nationality.

The Supreme Court has found it unconstitutional to deny such social benefits as public education to children unlawfully within the country, Plyler v. Doe 102 S. Ct. 2382 (1981). In doing so the Court has taken note of the danger of a "shadow population" and "the spectre of a permanent caste of undocumented resident aliens," ibid., 2395. Failure to count, and to provide representation for, such aliens would indeed make their presence ghostly and increase the likelihood of their becoming a kind of inferior, exploited caste. The Court drew attention to the statement of Senator Jacob M. Howard during the debate on the Fourteenth Amendment that the rights conferred by the first section belong "to all persons who may happen to be within their [the states'] jurisdiction." The Court quoted the teaching of Yo Wick, supra. The Court found that a state could not draw a line between lawfully and unlawfully resident alien children in making education available.

If the states cannot withhold such an important benefit as education, and if as a matter of course the states must provide police and fire protection and make available the highways, it is only right that the undocumented aliens be represented in Congress. Only in this way will the states with large numbers of undocumented aliens be assured of getting their fair share in the federal programs which would assist them in meeting their obligations to the strangers in their midst. To have the Supreme Court impose upon the states obligations towards the alien, and to have representation in Congress not reflect the distribution of the alien population, would be a species of unfairness. As the burdens or government increase with the existence of an alien population, legal or illegal, so should representation increase.

3. Actual Litigation of the Issue. In FAIR (Federation for American Immigration Reform) v. Klutznick 486 Supp. 564 (D.D.C. 1980), appeal dismissed 447 U.S. 918 (1980), affirmed per curiam (D. C. Cir., November 6, 1980) cert. den. 101 S. Ct. 1697, the plaintiffs sought an injunction to prevent the Census from counting aliens illegally in the country. Not only was the case dismissed on the grounds of lack of standing, but the court commented on the merits. It quoted Representative Emmanuel Cellar speaking in the House of Representatives and specifically arguing that the Founders intended everyone, including illegal aliens, to be counted. The court then said at 576, "We see little on which to base a conclusion that illegal aliens should now be excluded."

In Young v. Klutznick 497 F. Supp. 1318 (E. D. Mich. 1980), reversed 651 F. 2d 617 (6th Cir. 1981), the plaintiffs sought an order directing the Bureau of the Census to avoid an undercount of minorities and aliens. No distinction was drawn between legal and illegal aliens. The district court cited with approval FAIR v. Klutznick, supra. It issued an order, saying inter alia at 1339, that it was "the right of every person within the United States of America on April 1, 1980 to be counted in the census." The decision was reversed on the ground that a causal connection had not been established between a census undercount and injury to the plaintiffs; the district court's statement on the right to be counted was undisturbed.

Constitutional text, Supreme Court dicta, actual decisions thus support the view that Congress has no power to exclude undocumented aliens from being counted.

II. Arguments in the Affirmative

1. The Text of the Constitution. The Constitution itself is ambiguous and open to interpretation on this question. "Persons" in the Constitution is not used in the same sense in every context. For example, it is settled law that "persons" in section 1 of the Fourteenth Amendment includes "corporations," Santa Clara County v. Southern Pacific Railroad 118 U.S. 394 (1888). Yet no one has supposed that the Bureau of the Census should count corporations when counting persons under section 2 of the Fourteenth Amendment. This commonsense reaction--that "persons" in section 1 means something different from "persons"

in section 2--demonstrates that "persons" in the abstract is an ambiguous term whose meaning is to be determined by the context and purpose of the Constitution.

2. The Powers Conferred by the Constitution on Congress. Article 1, section 2 says that "the actual Enumeration" is to be made by Congress "in such manner as they shall by law direct." The language confers on Congress the power to make the actual count in such ways as Congress shall determine; it confers broad discretion on Congress to determine what "the actual Enumeration" shall be.

The Fourteenth Amendment, section 5, confers on Congress the "power to enforce, by appropriate legislation," the provisions of the amendment. The Supreme Court has recognized that this section gives Congress "a positive grant of legislative power" and a wide latitude, including the power to make determinations that will lead the Supreme Court to change its own reading of the Constitution, Katzenbach v. Morgan 384 U.S. 641 (1966).

Congress has also the powers conferred under Article I, section 8: "To regulate Commerce with foreign Nations" and "to establish an uniform Rule of Naturalization." The United States as a sovereign also has the duty and right under Article IV, section 4, "to guarantee to every State in this Union a Republican Form of Government" and to "protect each of them against Invasion."

These powers--the Article I, section 2, power carried over and strengthened by the Fourteenth Amendment, sections 2 and 5; the foreign commerce power; the naturalization power; and the

power to guarantee a republican form of government and to prevent invasions--are ample to legitimate the exercise of congressional authority to regulate representation based on undocumented aliens. As Justice Jackson, writing for the Court, said in Harrisades v. Shaughnessy 342 U.S. 580 at 588 (1952); "It is pertinent to observe that any policy towards aliens is itself intricately interwoven with contemporaneous policies to the conduct of foreign resolution, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." Where the courts should not interfere, it remains for Congress to set down the law constituting the proper rule.

3. The Decided Cases. Only one case litigated the issue of whether illegal aliens had to be counted, and it was decided on procedural grounds, FAIR v. Klutznick, supra. The other relevant case, Young v. Klutznick, supra was reversed on appeal, and the validity of its order to the Bureau of the Census was never examined on the merits. Neither case addressed itself to the power of Congress to make a determination of the issue. Neither case is a precedent on this question.

4. Dicta of the United States Supreme Court. The Supreme Court, upholding the exclusion of short-term resident aliens from Medicare, recognized that it is not necessary that "all aliens must be placed in a single homogenous legal classification,'"

Matthews v. Diaz 426 U.S. 67 at 78 (1976). There were, the Court said through Justice Stevens, at least the following categories:

1. The overnight visitor
2. The unfriendly agent of a foreign power
3. The resident diplomat
4. The illegal entrant (ibid. at 80)

It is not the policy of the Bureau of the Census to count all foreign diplomats, although in the most literal sense they are obviously persons, Affidavit of Daniel B. Levine, Deputy Director of the Census Bureau, filed in FAIR v. Klutznick, supra. If there was an invading army on American soil, one does not suppose the Bureau of the Census would count the enemy troops. There is no necessity that the Bureau count any alien who is unlawfully within our borders.

The Supreme Court has recognized that the states may exclude lawfully-admitted resident aliens from certain public offices. In a dictum the Court said a state could reserve for citizens those offices which "perform functions that go to the heart of representative government," Sugarman v. Dougall 413 U.S. 642 at 647. In Foley v. Connelie 435 U.S. 391 (1978) the Court, upholding a state discrimination against aliens, declared that "the right to govern is reserved to citizens" and acknowledged at 296 "the right...of the people to be governed by their citizen peers." Recently, in Cabell v. Chavez-Salido 454 U.S,. 432 (1982), the Court (5-4) upheld California's exclusion of resident aliens from the occupation of peace officer, accepting the argument that "although citizenship is not a relevant ground for

the distribution of economic benefits, it is a relevant ground for determining membership in the political community." The Court, through Justice White, went on to say:

> The exclusion of aliens from governmental process is not a deficiency in the democratic system but a necessary consequence of the community's process of self-definition.

By definition, aliens, the Court observed, are outside the political community.

If it is proper for the states to distinguish aliens from citizens as participants in the political process, it is a fortiori proper for Congress, which has far greater power as to aliens, to do so--especially is it proper where the function "goes to the heart of representative government." If "the right to govern is reserved to citizens" in the allocation of public offices in a state, the right to govern is a fortiori to be reserved to citizens in determining representation in the Congress. If the exclusion of even lawfully-admitted aliens, residents of long-standing, is constitutional, if it is not a deficiency but "a necessary consequence of the community's powers of self-definition," then, a fortiori, it is constitutional and even necessary for Congress to exclude from "the governmental process" aliens who have entered the country in violation of our laws.

5. Holdings of the Supreme Court. In Wesberry v. Sanders 377 U.S. 1 (1964), the Court ordered the Georgia legislature to redistrict the congressional districts in the state because of

marked disparities in their populations. The plaintiffs had contended that living in a large congressional district they were deprived of "the full benefit of their right to vote" in violation of Article I, section 2, of the Constitution. The Court accepted their claim and disapproved of "vote-diluting discrimination." The Court, through Justice Black, went on to state:

> To say that a vote is worth more in one district than another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principles of a House of Representatives elected by "the People," a principle tenaciously fought for and established at the Constitutional Convention, ibid. at 8.

The delegates at the Convention, the Chief Justice continued, wanted "every man's vote to count." He referred to "the Great Compromise" that gave every state two senators and made representation in the House proportionate to numbers, and then said at 14, "The principle solemnly embodied in the Great Compromise--equal representation in the House for equal numbers of people"--would be defeated if a state were "to give some voters a greater voice in choosing a Congressman than others."

Wesberry v. Sanders does not, of course, mandate absolute equality of congressional districts thoughout the country: the Constitution itself, Article I, assures every state, however small, of one congressman. But it is apparent that counting

large numbers of illegal aliens violates the principle of Wesberry v. Sanders. In districts where there are large numbers of such persons, the vote of those voting in the district counts more than the vote of those voting in districts of identical population where there are more persons voting. To take extreme examples:

District A: Population 400,000;
200,000 voters,
100,000 undocumented aliens

District B: Population 400,000;
300,000 voters,
no undocumented aliens

In District A, 101,000 votes are a majority sufficient to elect a Congressman; in District B, 151,000 votes are necessary. A vote in District A is worth more than a vote in District B. There is dilution of the votes in District B and discrimination against the citizens of District B.

Why has this discrimination not existed where other voteless groups have been counted? The answer is clear. There was no reason to think in 1787 that there would be an unequal distribution of women, or of children, or of convicts or of aliens. In the two cases where it was foreseen that the distribution of the voteless would not be random, explicit provision was made for their exclusion (the untaxed Indians) or for being counted at three-fifths (the slaves). What is new today is the presence of large groups of undocumented aliens not randomly distributed but concentrated in certain congressional

districts. It is true when the Fourteenth Amendment was adopted, the distribution of voteless women and voteless aliens was unequal--of women because of the male migration westwards, and of aliens because of the substantial immigration from Europe to the Northeast, (Joseph B. James, The Framing of the Fourteenth Amendment, Urbana: University of Illinois Press, 1956, pp. 23 and 185.) Consequently Senator Henry Wilson of Massachusetts and Representative Roscoe Conkling of New York opposed basing representation on the number of voters, Congressional Globe, 39th Cong. 1st Sess. 359 and 1256. But this intention to make the right to vote more valuable in one part of the country than another cannot be accorded recognition today. Since Wesberry v. Sanders, it has been clear that the controlling text of the Constitution is Article I, section 2, clause 1: The House of Representatives shall be chosen "by the People." In the light of that command and its interpretation in Wesberry it is unconstitutional to constitute congressional districts which unequally represent "the People."

The People, who have a right established by Article I, section 2, to elect the House of Representatives, are clearly the citizens, not aliens who have entered the country against the law. It is the member of the political community, self-defined to exclude aliens, that are represented in the political process. It destroys the basic constitutional norm established by Wesberry v. Sanders when voters in districts characterized by large numbers of illegal aliens have "a greater voice in choosing a Congressman" than voters in districts where there are few such

persons. The "shadow population" pointed to by Plyler v. Doe, supra, then functions to swell the value of votes in their district; and this, according to Wesberry v. Sanders, the Constitution forbids.

As Chief Justice Warren put it in Reynolds v. Sims 377 U.S. 533, 567 (1964), the case requiring redistributing of state legislative districts:

> To the extent that a citizen's right to vote is debased, he is that much less a citizen.

To create unequal election districts is one way to debase a citizen's vote. To create election districts unequally swelled by shadow populations, illegally in the country, is another way to debase the value of a citizen's vote.

Such a situation threatens the republican form of government guaranteed by Article IV. As Reynolds v. Sims at 573 quotes Thomas Jefferson: A "government is republican in proportion as every member composing it has equal voice in its concerns...by representatives chosen by himself." A government where those who are by definition nonmembers determine the number of representatives subverts the republican form. The "members" do not have equal voice. As in Animal Farm, some members are "more equal than others"--those who come from the districts where a vote is worth more.

Congress has power to correct this situation. Applying the rule of Reynolds v. Sims that electoral districts for a state legislature be equal, the Court pointed out that the states are not required "to include aliens, transients, short-term or

temporary residents," Burns v. Richardson 384 U.S. 73 (1966) at 92 (Brennan, J., upholding districting by Hawaii that did not count military transients in achieving equality of voting districts). Analogously, Congress, exercising its powers under Article I and the Fourteenth Amendment, may determine that illegal aliens not be counted.

Conclusion

The argument that the Constitution textually requires the enumeration of every person is superficially appealing, but unpersuasive on examination of the ambiguity of "Persons." The statements of the Supreme Court on the rights of aliens under the Fourteenth Amendment relate to section 1 rights and do not govern section 2. The Supreme Court itself has recognized the right of Congress to discriminate between types of aliens. No case has denied Congress the right of exercising its multiple powers under the Constitution to direct that aliens unlawfully within the country not be numbered in "the actual Enumeration." On the contrary, the principles laid down by the Supreme Court in Reynolds v. Sims and Wesberry v. Sanders require that such aliens, when they exist in large numbers, not be counted in determining congressional districts. The claim that representation should reflect population needs is appealing but overridden by the Constitution's direction that the participants in the political process--the citizens of the country--be equal in their votes. At the very least Congress has power under both Article I and the Fourteenth Amendment to direct that such aliens not be counted.

Senator COCHRAN. That concludes our hearing. We stand in recess.

[Whereupon, at 3:05 p.m., the subcommittee was recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF

ROGER CONNER

EXECUTIVE DIRECTOR

FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON ENERGY, NUCLEAR PROLIFERATION, AND

GOVERNMENT PROCESSES

CONCERNING

INCLUSION OF ILLEGAL ALIENS IN POPULATION TOTALS

USED FOR REAPPORTIONMENT OF CONGRESSIONAL SEATS

FOLLOWING THE 1980 CENSUS

SEPTEMBER 18, 1985

WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, on behalf of the Federation for American Immigration Reform (FAIR), I thank you and the Committee for holding these hearings. I am pleased to present the views of FAIR concerning the inclusion of illegal immigrants in the population totals used to divide congressional seats among the states.

FAIR is a national non-profit membership organization. Our national advisory board is chaired by Colorado Governor Richard Lamm and includes, to name only a few, former Senator Walter D. Huddleston, former Attorney General William French Smith, and former ranking minority member of the House Judiciary Committee Robert McClory.

FAIR's two primary goals are to end illegal immigration to the United States and to limit legal immigration to a level consistent with the national interest. FAIR is concerned that the inclusion of the illegal immigrants in the reapportionment base (the population total used to divide congressional seats among the states) will result in both increased institutionalization of illegal immigration and the creation of political groups or representatives who see a continued flow of illegal immigrants as in their political interests. FAIR believes that immigration has had a dramatic effect on the American political system in the last twenty-five years, and those special interests who benefit from the distortions caused by immigration are the ones who fight immigration reform the hardest.

FAIR has been concerned about the inclusion of illegal immigrants in the reapportionment base throughout its life as an organization. FAIR was organized late in 1978 and filed suit against the Census Bureau on this issue soon after the 1979 decision to include illegal immigrants in the reapportionment population totals.

In 1979, FAIR filed suit against the Census Bureau (among others) to stop

the Bureau from including illegal immigrants in the reapportionment base.[1] FAIR was joined in its suit by more than three dozen Members of Congress, and by a inner-city civil rights organization from Los Angeles.

FAIR's case was intricate and multi-faceted, but its central issue was that the inclusion of illegal immigrants in the reapportionment base violates the constitutional principle of "one person, one vote."[2] That is, by including illegal immigrants in the reapportionment base, the Census Bureau would dilute the votes of persons who live in areas with few illegal immigrants and enhance the votes of persons who live in states with many illegal immigrants.

FAIR and its co-plaintiffs noted that the inclusion of illegal immigrants in the reapportionment base would shift congressional seats away from states with few resident illegal immigrants and toward states with many resident illegal immigrants. Since FAIR filed suit before the 1980 Census, it could only speculate about the outcome (in terms of shifted congressional seats) of that Census. FAIR predicted, however, that both California and New York would benefit from the inclusion of illegal immigrants - California by gaining additional congressional seats and New York by not losing as many congressional seats as it otherwise would have. This prediction was made on the basis of projections of the likely illegal immigrant populations of the various states (both California and New York were known to have large illegal immigrant populations).

The State and City of New York intervened as Defendants in FAIR's suit. New York argued that they were entitled to have all of their residents,

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[1]FAIR v. Klutznick, 486 F.Supp. 564 (D.D.C. 1980)(three-judge court), appeal dismissed, 447 U.S. 918 (1980), affirmed per curiam (D.C. Cir., 1980), cert. den. ____ U.S. ____, 101 S.Ct. 1697 (1980).

[2]Wesberry v. Sanders, 377 U.S. 1 (1964).

temporary and permanent, legal and illegal, counted for reapportionment. They argued that even tourists and diplomats should be counted, since both the State and the City had to provide services to foreign visitors.

The position of the Census Bureau was that they were required by the words of the Fourteenth Amendment to count every person in the United States on Census Day, and that they were simply conducting an actual head-count (enumeration) without any adjustments or corrections. They intended to make every effort to count every human being in the country on April 1, 1980.

FAIR pointed out that the Census Bureau did, in fact, systematically exclude certain groups of aliens (foreign tourists, diplomats, temporary residents and others) from the reapportionment base. In addition, the Census Bureau routinely adjusted figures prior to reporting the reapportionment base. The Bureau was thus not conducting an actual enumeration.

In addition, FAIR pointed out that there was no indication that the authors of the Fourteenth Amendment wanted illegal immigrants to be counted for reapportionment purposes. There were no illegal aliens at the time the Fourteenth Amendment was drafted. Thus there was no way that the drafters of the Fourteenth Amendment could have intended to include an unknown class of aliens under the Fourteenth Amendment.

FAIR also noted that the 1980 Census questionnaires deliberately omitted any questions which could be used to determine whether a person responding was an illegal immigrant or not. The Census Bureau claimed that it would be impossible to include any such questions in 1980 (although similar questions had been used in several prior decades), and that any such attempt would reduce the number of legally-resident persons who would respond to the 1980 Census.

The court agreed that the inclusion of illegal immigrants in the

reapportionment base would affect reapportionment after the 1980 Census. The court also agreed that the inclusion of illegal immigrants in the reapportionment base would harm citizens. The court did not agree with FAIR's interpretation of the Fourteenth Amendment as not including illegal immigrants.

The court, however, decided the case only on procedural grounds. It held that FAIR and its co-plaintiffs did not show "with requisite specificity" which citizens would be harmed. Therefore, the court held that FAIR did not have "standing" to continue the suit.

FAIR was in a difficult position. The court held that FAIR and its co-plaintiffs could not show, prior to the Census, which citizens would be hurt. Yet the deliberate design of the 1980 Census forms was to omit the questions necessary to produce that information after the Census. FAIR could not bring its suit again until information was developed to show which states, and thus which citizens, were hurt by the Census Bureau's decision to include illegal immigrants in the reapportionment base.

FAIR had to wait until last year to receive that information. Through a complex series of analyses and calculations, the Census Bureau produced a partial count of the number of illegal immigrants in the United States. The Bureau found in 1984 that at least 2.1 million illegal aliens answered the 1980 Census (and hence were included in the 1980 reapportionment base).[3] Just

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[3]The Census Bureau count of 2.1 million illegal immigrants represents only a part of the illegal immigrant population in the United States on Census Day 1980. The Bureau itself estimates that it did not count even half of the illegal immigrants.

In addition, the Bureau counted only one of three groups of illegal immigrants; the Bureau counted only "permanent settler" illegal aliens, and did not include "sojourner" illegal aliens (who work for a few years and then return home), or "border crosser" illegal aliens (who repeatedly cross the border). We are not sure exactly how the Bureau decided which illegal aliens were "permanent settlers" or "sojourners" or "border crossers," or even whether those differences are significant.

a few days ago, in testimony before the House Judiciary Committee, a Census Bureau representative raised the estimate of the 1980 illegal immigrant population to 2 1/2 to 4 million.

The Congressional Research Service of the Library of Congress, at the request of then-Senator Walter D. Huddleston, calculated the effect on reapportionment of the inclusion of the 2.1 million illegal immigrants who answered the 1980 Census. (The calculations used the lower 1984 figures since the Census Bureau did not correct itself until this month.) The Congressional Research Service used the computer program required by law to be used by the Census Bureau for reapportionment.[4]

Even at the lower 1984 figure for illegal immigrants, there was an effect on congressional reapportionment. As FAIR had predicted in its suit four

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Thus, we do not know exactly how many illegal immigrants were in the United States on Census Day 1980. We have the number the Census Bureau included in the reapportionment base - 2,056,574 - but that number represents the lowest possible number, the "lowest bound." The actual illegal immigrant population is probably much larger, perhaps as many as eight million.

[4]By law (2 U.S.C. § 2(a)), the division of congressional seats among the states - reapportionment - is made by applying a complex statutory formula known as the method of equal proportions to the reapportionment base. The only variable in the formula is the population of the states; if, by migration or otherwise, one state's population increases more than other states' populations, the larger state will get more congressional seats.

The method of equal proportions, adopted in 1941, weighs claims of each state for each congressional seat against the claim of every other state. The seat is assigned to the state whose claim for that seat is numerically the highest.

The method of equal proportions multiplies each state's population by a fraction that incoporates the "priority" of a particular congressional seat. To see if a state should have received a second seat (beyond the Constitutionally-mandated first seat) after the 1970 Census, for example, the state's population was multiplied by the constant 0.70710678.

The first non-mandated seat after the 1970 Census went to California (which had a "priority value" of 14,212,042). New York, whose priority value for a second seat (12,913,236) was second highest, got the second seat. The fourth available seat in 1970 went to California, since its next priority value for another seat (found by multiplying the constant for another seat - 0.40824829 - by its population) was greater than the priority value of multiplying any other state's population by the constant for a second seat.

years before, both California and New York benefitted from the inclusion of illegal immigrants. California gained an extra seat it would not have without counting illegal immigrants and New York did not lose a seat it would otherwise have lost.

Two other states - Georgia and Indiana - were hurt by the inclusion of illegal immigrants. Georgia did not gain a seat it was entitled to by population growth, and Indiana lost one of its seats. The effect on those two states was dramatic; Indiana went through a wrenching reapportionment process to decide which of its seats would be eliminated, and Atlanta's black community was denied a seat of its own to which it would have been entitled by population growth. Thus, according to its own calculations, the Census Bureau's 1979 decision to include illegal immigrants in the reapportionment base increased the value of a Californian's and a New Yorker's vote, at the expense of a Georgian's and a Hoosier's.

The Bureau's social engineering will not be confined to the 1980 reapportionment. The Bureau apparently does not intend to alter its policy of including illegal immigrants for the 1990 Census.

The Census Bureau was reluctant to predict for this Committee the effect on the country of including illegal immigrants in the 1990 reapportionment base. But such predictions are not that difficult.

Even using the 1984 lower 2.1 million figure for illegal immigrants in the reapportionment base in 1980, and making a few assumptions about population growth and illegal migration, we can calculate the effect on the 1990 reapportionment process. Even more states, perhaps as many as <u>five more</u> states, will be hurt.

If the proportion of illegal immigrants counted in the Census remains the same relative to the states' populations (that is, if illegal immigrants

remain the same percentage of each state's populations), the Congressional Research Service calculates that after the 1990 Census, five more states will be hurt. Connecticut, Michigan, Missouri, North Carolina, and Pennsylvania will all lose one seat to the states with big illegal immigrant populations. California and New York will get two more seats each, and Texas will gain another seat.

Thus, over twenty years, ten states will have been affected, for better or worse (and mostly for the worse), because illegal immigrants were included in the reapportionment base. And that calculation is based on only a partial count of illegal immigrants in the Census.

If more illegal immigrants were actually counted, the shifts would be even more dramatic. If, for example, the higher 4 million illegal immigrant figure just admitted by the Census Bureau was used in recalculating the 1980 reapportionment, California would have received two more seats, and Alabama and Missouri would have lost one seat each.

This social engineering by the Census Bureau was the result of an administrative decision, not of an informed reading of the Constitution. The Bureau's position at this hearing is essentially the same as its position in the FAIR suit. It has not directly acknowledged its adjustments of the reapportionment base to exclude groups of aliens. Nor has it responded to the constitutional arguments eloquently and accurately presented by Professor Noonan.

The Bureau, in perhaps its most telling omission, has not explained to the Committee why it decided to eliminate the information needed to correct its administrative decision. The Bureau, by removing any questions which could be used to calculate the number and distribution of illegal immigrant respondents, insured that its social engineering could not be reversed. No one would have sufficient information to make any corrections in a reasonable

time.

Without that information, no person, using the FAIR v. Klutznick court's standards, could prove "with requisite specificity" which citizens would be or were harmed by the Bureau's decision. Thus, no person would have standing to challenge in court the Bureau's infliction of constitutional injury on American citizens.

The Census Bureau says it doesn't make policy decisions. In the past, that description may have been accurate. In this case, however, a conscious Census Bureau policy was made to include a category of persons which had not been included in the past, and which, as Professor Noonan pointed out, like corporations and foreign diplomats, were never intended to be counted for reapportionment purposes.

Nor was the Census Bureau simply implementing a policy decision made by someone else when it spent millions of dollars to encourage illegal immigrants to respond to the 1980 Census. The Bureau even went to the Justice Department and got the Immigration and Naturalization Service to suspend enforcement of the immigration laws for nine months before and following the 1980 Census. (That suspension of immigration law enforcement was unlawful, and was not adequately explained during the testimony of the INS before this Committee.) Such practices could only be interpreted as the single-minded pursuit of a policy decision by the Census Bureau, not as the simple execution of a duly-authorized program.

In pursuing its policy to transfer voting power to states with large illegal immigrant populations, the Census Bureau exceeded its own constitutional powers; its actions were ultra vires. The only branch of government with the power to determine the methods and means of conducting the

Census is Congress.[5] Although Congress has, through the Census Acts,[6] delegated power to the Census Bureau to conduct the Census, that delegated power is ministerial and does not include the power to dilute the votes of citizens.

There are three possible remedies to the Census Bureau's unconstitutional policies. The most drastic would be an amendment to the Fourteenth Amendment. Such an amendment could clarify the wording in the Fourteenth Amendment regarding which persons are to be counted for reapportionment purposes. Unfortunately, the only way to amend the Fourteenth Amendment is through another Constitutional amendment, and such amendments are extremely difficult to enact (among other reasons, many people have an appropriately negative response to changing the Constitution, however valid the reason).

Yet there may be no need for an amendment, since Congress has the power to direct the Census Bureau to stop its odious violations of constitutional rights. Under the analysis explained by Professor Noonan, with which I concur, Congress does have the power to require the Bureau to conduct the Census in accordance with the Constitution and the intent of the Framers. Congress is given that power by the Constitution. It has, in fact, delegated certain powers to the Census Bureau, and it is those statutes which govern both the taking of the Census and reapportionment.

Even congressional action, however, would not be necessary if the Bureau would simply reverse its own internal decision. The Census Bureau could easily return to the position it took prior to the 1980 Census: that aliens

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[5]Both Article I and the Fourteenth Amendments to the Constitution provide that Congress is to determine how the Census is to be conducted. Burns v. Richardson, 384 U.S. 73 (1966).

[6]13 U.S.C. § 1, et seq.; Census Act of 1976; P.L. 94-521; 90 Stat. 2459.

who are not permanent residents should not be counted for reapportionment purposes. They could add those few questions about citizenship required to determine the number and distribution of illegal immigrants among the states. They could, if the necessary questions were restored to the Census forms, make the needed adjustments prior to reporting the reapportionment base, as they do with foreign tourists and diplomats.

This is not a radical suggestion. The problems with illegal immigrants in the reapportionment base come from a 1979 Census Bureau decision; the decision can be reversed and the Census restored to its historical non-partisan, non-political status by a similar administrative decision.

We strongly urge this Committee to require the Census Bureau to make that administrative adjustment. The Census Bureau has a hard-won reputation as an impartial ministerial body; it should not allow the petty politics of the late 1970's to endanger that reputation. Nor should the Congress allow the Census Bureau to violate the constitutional rights and voting power of an entire nation merely to satisfy an erroneous theory about the distribution of political power and voting strength.

Thank you for allowing me to present the views of the Federation for American Immigration Reform (FAIR). I would be happy to answer any questions.

CONGRESSIONAL RESEARCH SERVICE

September 17, 1985

To: Senator John Glenn
(Attention: Brian Dettelbach)

From: Daniel Melnick, Specialist,
American National Government

Subject: **Analysis of Procedures the Census Bureau Could Use Regarding Counting Undocumented Aliens in the 1990 Census**

This memorandum responds to your request for a brief analysis of the operational considerations that the Census Bureau might face if it was decided to exclude undocumented aliens from the calculations used to determine the apportionment of the U.S. House of Representatives. You asked that this memorandum assume that the decision had been made and not discuss its legality or arguments for or against the proposal.

LIMITATIONS

Our analysis is based on available information. We did not perform any tests of the alternative procedures discussed. Consequently, we are limited to identifying some of the alternative procedures that could be used and highlighting their strengths and weaknesses. It is possible that other procedures could be developed which would be superior to the ones we were able to identify.

THREE ALTERNATIVE APPROACHES

If it were decided to exclude undocumented aliens from the census counts used for apportionment three of the possible operational approaches that might be used are:

A. Exclude undocumented aliens from the census count by placing a notice on the questionnaire asking them not to complete it and instructing census workers not to include persons found to be undocumented aliens.

B. Include undocumented aliens in the census count but add a

question that required them to identify themselves. Subsequently, remove them from the count used for the apportionment.

C. Do not change the field procedures, but estimate the number of undocumented aliens counted in the census in each State and subtract that number from the State's count when the apportionment is calculated.

The remainder of this memorandum outlines some of the strengths and weaknesses of each of these procedures.

I. Exclude undocumented aliens from the census count by placing a notice on the questionnaire asking them not to complete it and instructing census workers not to include persons found to be undocumented aliens.

A. Strengths

1. This procedure would provide one count for all purposes served by the census. The same set of numbers would be used for apportionment, redistricting, federal funds allocation, and social research.

2. This might be the simplest procedure to administer. The bureau would be given a clear mandate to exclude undocumented aliens.

B. Weaknesses

1. This procedure might inhibit some people from responding to che census questionnaire even though they are legal residents of the United States. Some recipients might fear reprisals based on the answers that they provided to the census takers. In addition, some undocumented aliens might complete the form if they believe that doing so may later enhance their prospects for legalization.

2. Census workers who must find people not filling out the mail questionnaire might encounter confusion when approaching nonresondents. How will they know whether a nonresponding household is supposed to respond? This might results in an undercount of legal residents, if enumerators assumed some of this group to be undocumented aliens.

II. Include undocumented aliens in the census count but add a question that required them to identify themselves. Subsequently, remove them from the count used for the apportionment.

A. Strengths

1. This procedure would provide a direct count of undocumented aliens, making it possible to judge their impact on various jurisdictions.

2. If it were later decided to include undocumented aliens in the apportionment [i.e. if the decision were changed] this procedure would provide a basis for including them.

B. Weaknesses

1. The procedure would rely on persons to identify themselves as undocumented aliens. The Bureau could be in the position of having to verify a legal status -- a function which it is not equipped to perform.

2. The inclusion of the question might give the census form a punitive appearance. Persons who are legal residents might be less likely to respond if they felt that the census procedure was being used as an administrative tool. Persons who are undocumented aliens might be less likely to complete the form or to identify themselves as undocumented if they were concerned that the information might later be used to identify their legal status.

III. Do not change the field procedures, but estimate the number of undocumented aliens counted in the census in each state and subtract that number from the State's count when the apportionment is calculated.

A. Strengths

1. This would be a low cost option. Costs would be limited to the effort of census demographers and statisticians. Possibly supplemental procedures would be needed, but these would not have a major impact on the census procedure.

2. The decision to exclude undocumented aliens could be overturned if it was subsequently decided that the procedure did not work.

B. Weaknesses

1. While unofficial estimates of the number of undocumented aliens counted in the 1980 census have been produced by a member of the Census Bureau's staff, the methods are still experimental. These estimates were produced at the State level. Estimates for places within states have not yet been produced. If the same experimental methods were developed for official use, this procedure would result in one set of figures for the apportionment and a different set for all other purposes. Critics might question how states will redistrict with figures including undocumented aliens that were not figured into the reapportionment.

2. As with any adjustment procedure, the exact methods used to figure the number of undocumented aliens in each State relies upon the assumptions selected by the statisticians and demographers. Some of the choices they might make could be criticized as being arbitrary. States that are disadvantaged by these decisions might object that the results depended upon the assumptions and could change if different and equally plausible conditions were assumed.

I trust this brief analysis meets your needs. If if there is any other way in which I can be of help, please do not hesitate to call me.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 3, 1984

TO: The Honorable Walter Huddleston
Attn: Roger LeMaster

FROM: David C. Huckabee
Analyst in American National Government
Government Division
Politics Section

SUBJECT: Adjusting the State Populations Used for Reapportionment to Account for Aliens

In accordance with your request and our telephone conversation relating to using Jeffrey Passell and Karen Woodrow's estimates of the undocumented immigrant population counted in the 1980 Census by State to compute apportionments, I am submitting this memorandum and accompanying tables. 1/

We agreed that I would use "unrounded" numbers (if I could obtain them) for the State-by-State estimates of undocumented aliens rather than the numbers published in the report available from the Census Bureau. The Population Division of the Census Bureau sent me these numbers (see Appendix I). These are the estimates that I used in my calculations. Several caveats should be noted about these estimates. First, outside of the Census Bureau, there has been little systematic research in the area

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1/ Jeffrey Passell and Karen A. Woodrow. Geopgraphic distribution of undocumented immigrants: estimates of the undocumented aliens counted in the 1980 Census by State. U.S. Bureau of the Census. Population Division, Washington, D.C.

A paper presented at the annual meeting of the Population Association of America, Minneapolis, Minnesota, May 3-5, 1984.

to which these Census estimates can be compared. I am sending a copy of a report describing the methodology of the study, as well as citations to other studies, but a summary from Passel and Woodrow's caveats about their assumptions may be useful.

Although there are numerous limitations (which I will describe below) that should be considered in using these data for apportionments, the results of my analysis may be summarized as follows. Under your first option, subtracting the estimates of the total number of undocumented aliens from each State's population results in the following changes from the 1980 apportionment currently in effect. California and New York each would lose one seat in the House. Indiana and Georgia each would gain a seat. Under option two, where you assume that the Census Bureau underestimated the number of undocumented aliens counted by fifty percent (so that the number of undocumented aliens reported as having been included in the census count is doubled, with these totals then subtracted from the State's apportionment population) California would lose three seats and New York one, with Alabama, Georgia, Indiana, and Missouri each gaining one seat each.

Method Used to Compute the Alien Population

The basic sources for Passell and Woodrow's estimates of the undocumented alien population were (1) questions on the foreign-born population in the Census, and (2) the alien registration data for January 1980 collected by the Immigration and Naturalization Service. Data from these sources were adjusted by the authors to account for

the deficiencies they knew existed in the numbers. 2/ Based on these analyses, Passell and Woodward's estimate that at least 2.06 million undocumented aliens were included in the 1980 Census. Passell and Woodward report that the geographic distribution of undocumented aliens "is quite similar to that of legally resident aliens, but some important difference do exist. The major differences are accounted for mostly by the fact that the undocumented group has a much larger proportion from Mexico"--the country that the authors report to be the source of the greatest number of undocumented aliens. Table 1 below sets out Passell and Woodward's (rounded) estimates of undocumented aliens counted in the census and the total number of legally resident aliens living in each State.

TABLE 1. Estimates of the Undocumented Aliens Counted in the 1980 Census and the Legally Resident Aliens by State of Residence (Population in thousands) 3/

State	Passell and Woodward's estimates of the population of undocumented aliens	Passell and Woodward's estimates of the population of legally resident aliens
Alabama	5	11
Alaska	1	6
Arizona	25	75
Arkansas	3	6
California	1024	1520
Colorado	19	38
Connecticut	4	90
Delaware	1	6
Florida	80	427
Georgia	12	30

2/ Ibid., p. 6.

3/ Ibid., p. 29.

TABLE 1. Estimates of the Undocumented Aliens Counted in the 1980 Census and the Legally Resident Aliens by State of Residence (Population in thousands)--Continued

State	Passell and Woodward's estimates of the population of undocumented aliens	Passell and Woodward's estimates of the population of legally resident aliens
Hawaii	-1 *	69
Idaho	5	7
Illinois	135	306
Indiana	8	33
Iowa	2	17
Kansas	8	19
Kentucky	4	19
Louisiana	7	39
Maine	-1 *	10
Maryland	32	66
Massachusetts	17	174
Michigan	8	123
Minnesota	9	32
Miseissippi	4	6
Missouri	7	25
Montana	0	4
Nebraska	3	8
Nevada	7	23
New Hampshire	0	10
New Jersey	37	281
New Mexico	13	22
New York	234	832
North Carolina	9	26
North Dakota	1	3
Ohio	10	76
Oklahoma	11	22
Oregon	15	35
Pennsylvania	7	107
Rhode Island	2	35
South Carolina	4	15

* Negative numbers appeared because of the method used. For the purposes of the apportionments computed in this analysis all negative numbers were set to zero.

TABLE 1. Estimates of the Undocumented Aliens Counted in the 1980 Census and the Legally Resident Aliens by State of Residence (Population in thousands)--Continued

State	Passell and Woodward's estimates of the population of undocumented aliens	Passell and Woodward's estimates of the population of legally resident aliens
South Dakota	0	2
Tennessee	6	16
Texas	186	505
Utah	9	16
Vermont	0	5
Virginia	34	62
Washington	22	80
West Virginia	1	6
Wisconsin	8	30
Wyoming	1	3

Passell and Woodward succinctly summarize their concerns about these estimates in the following paragraph.

> The validity of the estimates of undocumented aliens counted in the census necessarily depends on a number of factors, including the accuracy of the estimates of legally resident aliens; the validity of the various assumptions for allocation of estimates to the State level; the validity of the various assumptions used to modify the 1980 census data; the assumptions for allocation of estimates to the State level; and the census coverage of legally resident aliens. The utility of the estimates for generalizing about undocumented aliens depends further on the coverage of this group in the 1980 census. The estimates presented here should generally be regarded as lower bounds on the numbers of undocumented aliens in each state. As discussed by Warren and Passel (1984), the national estimates were designed to provide a firm lower bound; for States, the greater number of assumptions required weaken this firm nature of the bound, but probably not by very much. 4/

Although these estimates may realistically report the distribution of the undocumented alien population, using estimates such as these for

4/ Ibid., p. 20.

apportionment is not without risk. First, the issue of timing must be addressed. In 1980, the Census Bureau was still "cleaning up" numbers for various States in late December--days before the December 31 deadline for reporting the results of the reapportionment. Although the Census Bureau might be able to produce estimates of the number of undocumented aliens counted for each State sooner than four years after census day as they did for this census, could they be expected to produce reasonably accurate estimates eight months after the date? A difference of a few hundred persons in a State population count can, and has, made a difference in past apportionments in how many seats are awarded to a State.

Second, if the Census Bureau adjusts the counts used for apportionment to exclude the undocumented alien population, should the Bureau add back figures for persons that the Bureau estimates that were failed to be counted? If this happened the Bureau either could have to develop a rapid means of adjusting for the "undercount" as well as for estimating the number of undocumented aliens counted in the census, or the reapportionment date would have to be moved back to accommodate the necessary research to adjust the apportionment populations. Since the apportionment must be done to be effective in the next Congress following the proclamation of how many seats will be assigned to the States, a substantial slippage of the delivery date for the data would severly hinder State redistricting. Delaying the reapportionment too long could result in postponing the effective date of the reapportionment to the middle of the decade between censuses.

I know that you are aware of the constitutional issues, since Senator Huddleston was a party to the FAIR suit, so I will not restate them here.

Table 2., below, summarizes the results of the trial apportionments that you requested. In addition to the options you requested, I also included several other scenarios that others might suggest as alternatives to your proposals.

TABLE 2. 1980 Apportionment Based on Various Assumptions About the Impact of Accounting for the Undocumented Alien Estimates of Passell and Woodward

State	1980 apportionment	Change if undoc. aliens subtracted	Change undoc. aliens doubled and subtracted	Change if all aliens are subtracted	Change if undoc. aliens counts are added
Alabama	7		+1		
Alaska	1				
Arizona	5			+1	
Arkansas	4				
Calif.	45	-1	-3	-3	+2
Colorado	6				
Conn.	6				
Delaware	1				
Florida	19			-1	
Georgia	10	+1	+1	+1	
Hawaii	2				
Idaho	2				
Illinois	22				
Indiana	10	+1	+1	+1	
Iowa	6				
Kansas	5				
Kentucky	7				
Louisiana	8				
Maine	2				
Maryland	8				
Mass.	11				
Michigan	18				
Minnesota	8				
Mississippi	5				
Missouri	9		+1	+1	

(This table summarizes the changes set out in the apportionment data contained in the appendices.)

TABLE 2. 1980 Apportionment Based on Various Assumptions About the Impact of Accounting for the Undocumented Alien Estimates of Passell and Woodward--Continued

State	1980 apportionment	Change if undoc. aliens subtracted	Change undoc. aliens doubled and subtracted	Change if all aliens are subtracted	Change if undoc. aliens counts are added
Montana	2				
Nebraska	3				
Nevada	2				
N.H.	2				
New Jersey	14				
New Mexico	3				
New York	34	-1	-1	-2	
N.C.	11			+1	
N.D.	1				
Ohio	21				-1
Oklahoma	6				
Oregon	5				
Penns.	23				-1
R.I.	2				
S.C.	6				
S.D.	1				
Tennessee	9				
Texas	27				
Utah	3				
Vermont	1				
Virginia	10				
Washington	8				
W.Va.	4				
Wisconsisn	9				
Wyoming	1				

(This table summarizes the changes set out in the apportionment data contained in the appendices.)

In addition to the data for the 1980 Census, you also requested similar data for population projections for the 1990 Census. The population projections

used to compute these apportionments were issued in 1983 by the Census Bureau. The Census Bureau has stated numerous caveats about the limitations of these projections summarized from their introduction.

> This report presents projections of the resident population of each State by five year age groups and sex for July 1, 1990 and 2000. These projections represent the first series of State population projections released by the Census Bureau that are based on the 1980 census results and that are consistent with the middle series of national population projections published as Current Population Reports, Series P-25, No. 922. This set of projections is provisional in that it was developed with a cohort-component projections model employing residual measures of migration. The projections presented here are not forecasts of each State's future growth patterns. They present the results of continuing the migration patterns by age and sex estimated for the 1970-1980 decade. 5/

Projections of this type have been inaccurate in the past. If we adjust these numbers to reflect the number of undocumented aliens counted in the 1980 Census, the numbers become even more speculative. Table 3 below reports apportionment figures for the alien populations that you specifically requested, figuring the impact of subtracting the number of undocumented aliens estimated to have been counted in 1980 by the Census Bureau, and twice that number to account for a possible undercount of half the undocumented aliens.

If we had estimates of the trend of the migration of undocumented aliens in the States we might be able to extend those trend lines into the future using the same assumptions that the Census Bureau used in producing its population projections for 1990. Because we lack such information, we

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5/ U.S. Department of Commerce. Bureau of the Census. Population estimates and projections. Provisional projections of population of States by age and sex: 1980 to 2000. Series P-25, No. 937.

are presenting your requested 1990 projections in two ways. The first method assumes that the same number of undocumented aliens that were estimated to have been counted in the 1980 Census for each State will be estimated to have been counted in the 1990 Census. We merely subtracted the appropriate figures from the Census Bureau's 1990 total State population projections. The second method assumes that the undocumented alien population will change at a rate proportional to the change in the State's total population. Thus we calculated the proportion of the State's population that was estimated to have been undocumented aliens. We then multiplied this figure by the State's estimated 1990 population and subtracted the result from the State's projected population. Neither of these methods should be regarded as estimates of the impact of including the undocumented aliens in the population figures that will be used for the 1990 Census. There are too many unknowns to even characterize these figures as rough estimates. These figures should be used for illustrative purposes only.

TABLE 3. 1990 Apportionment Based on Various Assumptions About the Impact of Accounting for the Undocumented Alien Estimates of Passell and Woodward

State	Projected 1990 apportionment	Change if 80 est. of undoc. aliens subtracted	Change if 80 undoc. aliens doubled and subtracted	Change if % of 80 undoc. aliens subtracted	Change if % of 80 undoc. are doubled & subtracted
Alabama	7		+1		+1
Alaska	1				
Arizona	7				
Arkansas	5				
Calif.	48	-1	-3	-2	-3

(This table summarizes the changes set out in the apportionment data contained in the appendices.)

TABLE 3. 1990 Apportionment Based on Various Assumptions About the Impact of Accounting for the Undocumented Alien Estimates of Passell and Woodward--Continued

State	Projected 1990 apportionment	Change if 80 est. of undoc. aliens subtracted	Change if 80 undoc. aliens doubled and subtracted	Change if % of 80 undoc. aliens subtracted	Change if % of 80 undoc. are doubled & subtracted
Colorado	7				
Conn.	5	+1	+1	+1	+1
Delaware	1				
Florida	23				
Georgia	11				
Hawaii	2				
Idaho	2				
Illinois	20				
Indiana	10				
Iowa	5				
Kansas	4				
Kentucky	7				
Louisiana	8				
Maine	2				
Maryland	8				
Mass.	10				
Michigan	16		+1	+1	+1
Minnesota	8				
Mississippi	5				
Missouri	9			+1	
Montana	2				
Nebraska	3				
Nevada	2				
N.H	-				
New Jersey	13				
New Mexico	3				
New York	29		-1	-2	
N.C.	11		+1	+1	
N.D.	1				
Ohio	19				

(This table summarizes the changes set out in the apportionment data contained in the appendices.)

Table 3. 1990 Apportionment Based on Various Assumptions About the Impact of Accounting for the Undocumented Alien Estimates of Passell and Woodward--Continued

State	Projected 1990 apportionment	Change if 80 est. of undoc. aliens subtracted	Change if 80 undoc. aliens doubled and subtracted	Change if % of 80 undoc. aliens subtracted	Change if % of 80 undoc. are doubled & subtracted
Oklahoma	6				
Oregon	6				
Penns.	20	+1	+1	+1	+1
R.I.	2				
S.C.	6				
S.D.	1				
Tennessee	9				
Texas	31	-1	-1	-1	-1
Utah	4				
Vermont	1				
Virginia	10				
Washington	9				
W.Va.	4				
Wisconsin	9				
Wyoming	1				

(This table summarizes the changes set out in the apportionment data contained in the appendices.)

Appendicies

The appendices that follow include a copy of the Census Bureau's "unrounded" estimates of the undocumented alien population counted in the 1980 Census for each State (Appendix A). Appendices B and C-J are the summary pages from the calculations of the apportionments that are summarized further in the tables

above. We have not included all the "priority" lists that show how each seat is assigned by the apportionment formula. We are including the priorty list for Appendix B as an illustration of what is available. The priority list is labeled Appendix C. If you need this data for all the tables we can provide this as well.

I trust that this will meet your needs in this matter. Please feel free to call me if I can further assist you. I can be reached on 287-7877.

Appendix A: Unrounded Estimates of the Undocumented Alien Population

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

July 19, 1984

Mr. David Huckabee
Congressional Research Service
Library of Congress
Washington, D.C. 20540

Dear Mr. Huckabee:

Enclosed are unpublished estimates of undocumented aliens resident in the 50 states and counted in the 1980 census. Drs. Passel and Woodrow have indicated to me your interest in using these estimates for the purpose of examining the effects of inclusion of undocumented aliens in the apportionment process.

The figures shown are the unrounded version of the estimates contained in table 1 of the paper, "Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State", by Passel and Woodrow. As such, they are subject to all of the limitations discussed in that paper. For your reference, a copy of the paper is also enclosed.

As requested, you have been placed on the mailing list for "Enumeration of Undocumented Aliens in the 1980 Census and Implications for 1990" to be presented by Drs. Passel and Woodrow at the American Statistical Association Meeting, August 13-16, in Philadelphia.

Sincerely,

Roger A. Herriot

ROGER A. HERRIOT
Chief, Population Division
Bureau of the Census

Enclosures

Estimates of Undocumented Aliens Counted
in the 1980 Census, by State

All States	2,056,574
Alabama	4,794
Alaska	1,283
Arizona	24,759
Arkansas	3,344
California	1,023,711
Colorado	18,536
Connecticut	4,119
Delaware	814
Dist. of Columbia	13,877
Florida	80,258
Georgia	11,939
Hawaii	-859
Idaho	5,013
Illinois	135,497
Indiana	7,531
Iowa	2,375
Kansas	8,081
Kentucky	4,485
Louisiana	7,130
Maine	-610
Maryland	32,134
Massachusetts	17,496
Michigan	7,724
Minnesota	9,283
Mississippi	3,949
Missouri	6,836
Montana	366
Nebraska	3,444
Nevada	6,620
New Hampshire	148
New Jersey	36,752
New Mexico	13,166
New York	234,495
N. Carolina	9,311
N. Dakota	799
Ohio	9,814
Oklahoma	11,486
Oregon	14,557
Pennsylvania	7,443
Rhode Island	1,743
S. Carolina	4,259
S. Dakota	100
Tennessee	6,438
Texas	186,180
Utah	8,553
Vermont	-2
Virginia	34,488
Washington	22,139
W. Virginia	1,445
Wisconsin	8,327
Wyoming	1,004

Source: Unrounded figures consistent with a paper presented at the annual meeting of the Population Association of America, Minneapolis, Minnesota, May 3-5, 1984, entitled "Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State", by Jeffrey S. Passel and Karen A. Woodrow.

Appendix B: 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	3885267	7
AK	399198	1
AZ	2693107	5
AR	2282169	4
CA	22644851	44
CO	2870298	6
CN	3103457	6
DL	594411	1
FL	9659734	19
GA	5452326	11
HA	965000	2
ID	938922	2
IL	11282964	22
IN	5482648	11
IO	2911012	6
KA	2355127	5
KY	3656948	7
LA	4196842	8
ME	1124660	2
MD	4184312	8
MA	5719541	11
MG	9250620	18
MN	4067865	8
MS	2516689	5
MO	4911058	9
MT	786324	2
NB	1566562	3
NV	792564	2
NH	920462	2
NJ	7327406	14
NM	1286802	3
NY	17322793	33
NC	5865118	11
ND	651896	1
OH	10787605	21
OK	3013780	6
OR	2348106	5
PA	11859285	23
RI	945411	2
SC	3114949	6
SD	690078	1
TN	4584312	9
TX	14042203	27
UT	1452484	3
VT	511456	1
VA	5311791	10
WA	4108024	8
WV	1948199	4
WS	4697008	9
WY	469812	1
TOTAL REPRESENTATIVES		435

Appendix C: Priority List for 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

SEQ	ST	SEAT	PRIORITY
51	CA	2	016012327.42
52	NY	2	012249064.18
53	TX	2	009929336.79
54	CA	3	009244720.69
55	PA	2	008385780.70
56	IL	2	007978260.21
57	OH	2	007627988.51
58	NY	3	007071999.85
59	FL	2	006830463.29
60	MG	2	006541176.02
61	CA	4	006537005.29
62	TX	3	005732704.74
63	NJ	2	005181258.38
64	CA	5	005063541.88
65	NY	4	005000659.51
66	PA	3	004841532.29
67	IL	3	004606250.25
68	OH	3	004404020.81
69	NC	2	004147264.63
70	CA	6	004134364.48
71	TX	4	004053634.76
72	MA	2	004044326.15
73	FL	3	003943569.45
74	IN	2	003876817.51
75	NY	5	003873493.70
76	GA	2	003855376.62
77	MG	3	003776549.38
78	VA	3	003756003.37
79	CA	7	003494175.51
80	MO	2	003472642.35
81	PA	4	003423480.63
82	WS	2	003321286.15
83	IL	4	003257111.09
84	TN	2	003241598.04
85	NY	6	003162694.25
86	TX	5	003139931.59
87	OH	4	003114113.26
88	CA	8	003026044.43
89	NJ	3	002991400.64
90	LA	2	002967615.38
91	MD	2	002958755.33
92	WA	2	002904811.57
93	MN	2	002876414.87
94	FL	4	002788524.96
95	AL	2	002747298.59
96	NY	7	002672964.33
97	MG	4	002670423.92
98	CA	9	002668720.11
99	PA	5	002651816.35
100	KY	2	002585852.68
101	TX	6	002563743.31
102	IL	5	002522947.08
103	OH	5	002412181.45
104	NC	3	002394424.13
105	CA	10	002386975.74
106	MA	3	002334992.57
107	NY	8	002314854.76
108	IN	3	002238281.42
109	GA	3	002225902.52
110	SC	2	002202601.52
111	CN	2	002194475.45
112	VA	3	002168529.35
113	TX	7	002166758.43
114	PA	6	002165198.91
115	FL	5	002159981.87
116	CA	11	002159100.77
117	OK	2	002131064.23
118	NJ	4	002115239.87
119	MG	5	002068501.21
120	IL	6	002059977.59
121	IO	2	002058396.29
122	NY	9	002041509.83
123	CO	2	002029607.14
124	MO	3	002004930.81
125	CA	12	001970980.99
126	OH	6	001969537.84
127	WS	3	001917545.27
128	AZ	2	001904314.18
129	TX	8	001876467.64
130	TN	3	001871537.33
131	PA	7	001829926.95
132	NY	10	001825981.83
133	CA	13	001813038.67
134	MS	2	001779567.82
135	FL	6	001763617.75
136	IL	7	001740998.71
137	LA	3	001713353.38
138	MD	3	001708238.03
139	NC	4	001693113.69
140	MG	6	001688924.11
141	CA	14	001678546.69
142	WA	3	001677093.59
143	KA	2	001665326.24
144	OH	7	001664563.18
145	MN	3	001660698.75
146	OR	2	001660361.64
147	TX	9	001654888.76
148	NY	11	001651662.70
149	MA	4	001651089.23
150	NJ	5	001638457.55
151	AR	2	001613737.14
152	AL	3	001586153.43
153	PA	8	001584763.05
154	IN	4	001582704.12
155	GA	4	001573950.91
156	CA	15	001562641.97
157	VA	4	001533381.95
158	NY	12	001507755.37
159	IL	8	001507748.95
160	KY	3	001492942.60
161	FL	7	001490528.95
162	TX	10	001480177.45
163	CA	16	001461717.98
164	OH	8	001441553.84
165	MG	7	001427401.30
166	MO	4	001417700.30
167	PA	9	001397629.52
168	NY	13	001386933.10
169	WV	2	001377584.70

Appendix C: Priority List for 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

170	CA	17	001373045.74
171	WS	4	001355909.39
172	TX	11	001338870.86
173	NJ	6	001337794.94
174	IL	9	001329709.47
175	TN	4	001323376.85
176	NC	5	001311480.06
177	CA	18	001294519.91
178	FL	8	001290835.79
179	NY	14	001284049.82
180	MA	5	001278928.06
181	SC	3	001271672.46
182	OH	9	001271330.88
183	CN	3	001266980.87
184	PA	10	001250077.80
185	MG	8	001236165.65
186	OK	3	001230370.39
187	IN	5	001225957.18
188	CA	19	001224493.29
189	TX	12	001222216.70
190	GA	5	001219176.98
191	LA	4	001211523.90
192	MD	4	001207906.80
193	NY	15	001195385.36
194	IL	10	001189328.26
195	IO	3	001188415.54
196	VA	5	001187752.40
197	WA	4	001185884.35
198	MN	4	001174291.45
199	CO	3	001171794.12
200	CA	20	001161656.31
201	FL	9	001138410.07
202	OH	10	001137112.86
203	PA	11	001130737.90
204	NJ	7	001130643.01
205	TX	13	001124275.75
206	AL	4	001121579.95
207	NY	16	001118180.82
208	NB	2	001107726.59
209	CA	21	001104955.58
210	AZ	3	001099456.20
211	MO	5	001098145.79
212	MG	9	001090195.54
213	IL	11	001075787.88
214	NC	6	001070818.95
215	KY	4	001055669.93
216	CA	22	001053533.75
217	NY	17	001050348.58
218	WS	5	001050282.76
219	MA	6	001044240.35
220	TX	14	001040876.50
221	PA	12	001032218.11
222	OH	11	001028557.27
223	MS	3	001027433.86
224	UT	2	001027061.26
225	TN	5	001025083.17
226	FL	10	001018224.88
227	CA	23	001006686.36
228	IN	6	001000989.81
229	GA	6	000995453.80
230	NY	18	000990278.12
231	IL	12	000982055.81
232	NJ	8	000979165.46
233	MG	10	000975100.49
234	VA	6	000969795.74
235	TX	15	000969003.31
236	CA	24	000963828.80
237	KA	3	000961476.46
238	OR	3	000958610.15
239	PA	13	000949502.48
240	OH	12	000938940.35
241	LA	5	000938442.26
242	NY	19	000936709.36
243	MO	5	000935640.47
244	AR	3	000931691.49
245	CA	25	000924472.12
246	FL	11	000921019.04
247	WA	5	000918581.95
248	NM	2	000909906.40
249	MN	5	000909602.13
250	TX	16	000906419.77
251	NC	7	000905007.13
252	IL	13	000903359.88
253	SC	4	000899208.30
254	MO	6	000896632.25
255	CN	4	000895890.85
256	NY	20	000888640.50
257	CA	26	000888204.06
258	MA	7	000882544.12
259	MG	11	000882011.57
260	PA	14	000879067.99
261	OK	4	000870003.33
262	AL	5	000868771.98
263	OH	13	000863699.43
264	NJ	9	000863542.69
265	WS	6	000857552.25
266	CA	27	000854674.79
267	TX	17	000851433.60
268	IN	7	000845990.74
269	NY	21	000845265.74
270	GA	7	000841311.96
271	FL	12	000840771.80
272	IO	4	000840336.76
273	TN	6	000836976.88
274	IL	14	000836348.27
275	CO	4	000828583.64
276	CA	28	000823585.25
277	VA	7	000819626.94
278	PA	15	000818367.78
279	KY	5	000817718.31
280	NY	22	000805929.22
281	MG	12	000805163.00
282	TX	18	000802739.28
283	OH	14	000799629.84
284	WV	3	000795348.82
285	ME	2	000795254.69
286	CA	29	000794678.41
287	NC	8	000783759.08
288	IL	15	000778597.88
289	AZ	4	000777433.01

Appendix C: Priority List for 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

290	FL	13	000773397.50
291	NJ	10	000772376.04
292	NY	23	000770092.04
293	CA	30	000767732.32
294	LA	6	000766234.87
295	PA	16	000765513.10
296	MA	8	000764305.54
297	MD	6	000763947.21
298	TX	19	000759315.37
299	MO	7	000757792.51
300	WA	6	000750019.00
301	OH	15	000744414.89
302	MN	6	000742687.00
303	CA	31	000742553.88
304	MG	13	000740642.17
305	NY	24	000737306.98
306	IN	8	000732649.39
307	GA	8	000728597.45
308	IL	16	000728311.76
309	MS	4	000726505.52
310	WS	7	000724763.89
311	TX	20	000720349.79
312	PA	17	000719074.76
313	CA	32	000718974.71
314	FL	14	000716026.55
315	VA	8	000709817.67
316	AL	6	000709349.33
317	TN	7	000707374.52
318	NY	25	000707200.02
319	NJ	11	000698640.40
320	CA	33	000696847.10
321	SC	5	000696523.66
322	OH	16	000696336.49
323	CN	5	000693953.98
324	NC	9	000691210.48
325	MG	14	000685701.02
326	TX	21	000685189.34
327	IL	17	000684130.16
328	HA	2	000682358.03
329	KA	4	000679866.59
330	NY	26	000679455.78
331	PA	18	000677950.17
332	OR	4	000677839.80
333	CA	34	000676040.97
334	MA	9	000674054.07
335	OK	5	000673901.59
336	RI	2	000668506.51
337	KY	6	000667664.18
338	FL	15	000666584.45
339	ID	2	000663918.10
340	AR	4	000658805.43
341	CA	35	000656441.42
342	MO	8	000656267.49
343	OH	17	000654094.61
344	NY	27	000653806.66
345	TX	22	000653302.37
346	IO	5	000650921.97
347	NH	2	000650864.91
348	LA	7	000647586.62
349	IN	9	000646135.97
350	MD	7	000645653.20
351	IL	18	000645004.09
352	GA	9	000642562.49
353	CO	5	000641818.05
354	PA	19	000641276.68
355	NB	3	000639546.18
356	MG	15	000638352.93
357	CA	36	000637946.38
358	NJ	12	000637768.73
359	WA	7	000633881.71
360	NY	28	000630023.88
361	MN	7	000627685.04
362	WS	8	000627663.87
363	VA	8	000626000.29
364	TX	23	000624252.03
365	FL	16	000623532.78
366	CA	37	000620465.07
367	NC	10	000618237.42
368	OH	18	000616686.30
369	TN	8	000612604.24
370	IL	19	000610112.81
371	PA	20	000608368.46
372	NY	29	000607910.81
373	CA	38	000603916.36
374	MA	10	000602892.26
375	AZ	5	000602196.94
376	AL	7	000599509.56
377	TX	24	000597675.81
378	MG	16	000597124.60
379	UT	3	000592974.04
380	CA	39	000588227.50
381	NY	30	000587297.66
382	NJ	13	000586661.86
383	FL	17	000585707.39
384	OH	19	000583326.86
385	IL	20	000578803.82
386	MO	9	000578773.48
387	PA	21	000578673.85
388	IN	10	000577921.56
389	GA	10	000574725.34
390	CA	40	000573333.23
391	TX	25	000573270.50
392	SC	6	000568709.17
393	NY	31	000568036.73
394	CN	6	000566611.03
395	KY	7	000564279.18
396	MS	5	000562748.68
397	WV	4	000562396.59
398	MG	17	000560901.21
399	LA	8	000560826.40
400	NV	2	000560427.36
401	VA	10	000559911.56
402	NC	11	000559216.78
403	CA	41	000559174.72
404	MD	8	000559152.01
405	MT	2	000556015.02
406	WS	9	000553547.45
407	OH	20	000553392.44
408	FL	18	000552210.21
409	PA	22	000551743.84

Appendix C: Priority List for 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

410	TX	26	000550780.47
411	IL	21	000550552.26
412	OK	6	000550238.33
413	NY	32	000549999.21
414	WA	8	000548957.60
415	CA	42	000545698.60
416	MA	11	000545336.57
417	MN	8	000543591.13
418	NJ	14	000543143.03
419	TN	9	000540266.11
420	NY	33	000533072.09
421	CA	43	000532856.85
422	IO	6	000531475.55
423	TX	27	000529988.77
424	MG	18	000528822.72
425	PA	23	000527209.49
426	KA	5	000526622.33
427	OH	21	000526381.22
428	NM	3	000525334.65
429	OR	5	000525052.38
430	IL	22	000524930.96
431	CO	6	000524042.22
432	IN	11	000522749.72
433	FL	19	000522338.59
434	CA	44	000520605.61
435	GA	11	000519858.63

Appendix D: 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Doubled and then Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	3880473	8
AK	397915	1
AZ	2668348	5
AR	2278825	4
CA	21621140	42
CO	2851762	6
CN	3099338	6
DL	593597	1
FL	9579476	19
GA	5440387	11
HA	965000	2
ID	933909	2
IL	11147467	22
IN	5475117	11
IO	2908637	6
KA	2347046	5
KY	3652463	7
LA	4189712	8
ME	1124660	2
MD	4152178	8
MA	5702045	11
MG	9242896	18
MN	4058582	8
MS	2512740	5
MO	4904672	10
MT	785958	2
NB	1563118	3
NV	785944	2
NH	920314	2
NJ	7290654	14
NM	1273636	3
NY	17088298	33
NC	5855807	11
ND	651097	1
OH	10777791	21
OK	3002294	6
OR	2333549	5
PA	11851842	23
RI	943668	2
SC	3110690	6
SD	689978	1
TN	4577874	9
TX	13856023	27
UT	1443931	3
VT	511456	1
VA	5277303	10
WA	4085885	8
WV	1946754	4
WS	4688681	9
WY	468808	1
TOTAL REPRESENTATIVES		435

Appendix E: 1980 Apportionment if Passell and Woodrow's Estimates for All Classes of Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	3874267	8
AK	393198	1
AZ	2618107	5
AR	2276169	5
CA	21124851	42
CO	2832298	6
CN	3013457	6
DL	588411	1
FL	9232734	18
GA	5422326	11
HA	896000	2
ID	931922	2
IL	10976964	22
IN	5449648	11
IO	2894012	6
KA	2336127	5
KY	3645948	7
LA	4157842	8
ME	1114660	2
MD	4118312	8
MA	5545541	11
MG	9127620	18
MN	4035865	8
MS	2510689	5
MO	4886058	10
MT	782324	2
NB	1558562	3
NV	769564	2
NH	910462	2
NJ	7046406	14
NM	1264602	3
NY	16490793	32
NC	5839118	12
ND	648896	1
OH	10711605	21
OK	2991780	6
OR	2313106	5
PA	11752285	23
RI	910411	2
SC	3099949	6
SD	688078	1
TN	4568312	9
TX	13537203	27
UT	1436484	3
VT	506456	1
VA	5249791	10
WA	4028024	8
WV	1942199	4
WS	4667008	9
WY	466812	1
TOTAL REPRESENTATIVES		435

Appendix F: 1980 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Added to the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	3894855	7
AK	401764	1
AZ	2742625	5
AR	2288857	4
CA	24692273	47
CO	2907370	6
CN	3111695	6
DL	596039	1
FL	9820250	19
GA	5476204	10
HA	965000	2
ID	948948	2
IL	11553958	22
IN	5497710	10
IO	2915762	6
KA	2371289	5
KY	3665918	7
LA	4211102	8
ME	1124660	2
MD	4248580	8
MA	5754533	11
MG	9266068	18
MN	4086431	8
MS	2524587	5
MO	4923830	9
MT	787056	2
NB	1573450	3
NV	805804	2
NH	920758	2
NJ	7400910	14
NM	1313134	3
NY	17791783	34
NC	5883740	11
ND	653494	1
OH	10807233	20
OK	3036752	6
OR	2377220	5
PA	11874171	22
RI	948897	2
SC	3123467	6
SD	690278	1
TN	4597188	9
TX	14414563	27
UT	1469590	3
VT	511456	1
VA	5380767	10
WA	4152302	8
WV	1951089	4
WS	4713662	9
WY	471820	1
TOTAL REPRESENTATIVES		435

Appendix G: 1990 Apportionme. if Passell and Woodrow's Estimates of the Undocumented Aliens Were Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	4209006	7
AK	520817	1
AZ	3968941	7
AR	2576456	5
CA	26501889	47
CO	3736564	7
CN	3131481	6
DL	628986	1
FL	13235742	23
GA	6162661	11
HA	1138100	2
ID	1208787	2
IL	11367003	20
IN	5671769	10
IO	2980925	5
KA	2455319	4
KY	4069015	7
LA	4739870	8
ME	1229400	2
MD	4458966	8
MA	5686404	10
MG	9386576	16
MN	4349117	8
MS	2757451	5
MO	5070414	9
MT	888034	2
NB	1636356	3
NV	1268780	2
NH	1138652	2
NJ	7476348	13
NM	1522834	3
NY	16222205	29
NC	6464089	11
ND	677601	1
OH	10763286	19
OK	3491914	6
OR	3304043	6
PA	11712957	21
RI	949057	2
SC	3555341	6
SD	698400	1
TN	5066162	9
TX	17312020	30
UT	2031747	4
VT	574600	1
VA	5926412	10
WA	4989661	9
WV	2035955	4
WS	5024373	9
WY	700296	1
TOTAL REPRESENTATIVES		435

Appendix H: 1990 Apportionment if Passell and Woodrow's Estimates of the Undocumented Aliens Were Doubled and then Subtracted from the Population Figures Used for Reapportioning Seats in the House of Representatives

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	4204212	8
AK	519534	1
AZ	3944182	7
AR	2573112	5
CA	25478178	45
CO	3718028	7
CN	3127362	6
DL	628172	1
FL	13155484	23
GA	6150722	11
HA	1138100	2
ID	1203774	2
IL	11231506	20
IN	5664238	10
IO	2978550	5
KA	2447238	4
KY	4064530	7
LA	4732740	8
ME	1229400	2
MD	4426832	8
MA	5668908	10
MG	9378852	17
MN	4339834	8
MS	2753502	5
MO	5064028	9
MT	887668	2
NB	1632912	3
NV	1262160	2
NH	1138504	2
NJ	7439596	13
NM	1509668	3
NY	15987710	28
NC	6454778	12
ND	676802	1
OH	10753472	19
OK	3480428	6
OR	3289486	6
PA	11705514	21
RI	947314	2
SC	3551082	6
SD	698300	1
TN	5059724	9
TX	17125840	30
UT	2023194	4
VT	574600	1
VA	5891924	10
WA	4967522	9
WV	2034510	4
WS	5016046	9
WY	699292	1
TOTAL REPRESENTATIVES		435

Appendix I: 1990 Apportionment if Passell and Woodrow's Estimates of the Undocumented Alien Population are Used for Reapportioning Seats in the House of Representatives So that the Undocumented Alien Population Would be in the Same Proportion to the Total State Population as it was in the 1980 Estimates

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	4208607	7
AK	520427	1
AZ	3957319	7
AR	2576025	5
CA	26335065	46
CO	3731006	7
CN	3131444	6
DL	628939	1
FL	13206276	23
GA	6161109	11
HA	1138100	2
ID	1207354	2
IL	11366006	20
IN	5671510	10
IO	2980868	5
KA	2454976	4
KY	4068510	7
LA	4738949	8
ME	1229400	2
MD	4456873	8
MA	5686505	10
MG	9386463	17
MN	4348477	8
MS	2757074	5
MO	5070207	9
MT	887936	2
NB	1636203	3
NV	1264835	2
NH	1138617	2
NJ	7475605	13
NM	1520443	3
NY	16236904	29
NC	6463140	11
ND	677570	1
OH	10763308	19
OK	3490099	6
OR	3298153	6
PA	11713049	21
RI	949050	2
SC	3554740	6
SD	698399	1
TN	5065486	9
TX	17269234	30
UT	2028356	4
VT	574600	1
VA	5922447	10
WA	4984935	9
WV	2035890	4
WS	5023794	9
WY	699804	1
TOTAL REPRESENTATIVES		435

Appendix J: 1990 Apportionment if Passell and Woodrow's Estimates of the Undocumented Alien Population are Used for Reapportioning Seats in the House of Representatives So that the Undocumented Alien Population Would be Double the Proportion to the Total State Population as it was in the 1980 Estimates

STATE	ADJUSTED POPULATION	REPRESENTATIVES
AL	4203415	8
AK	518755	1
AZ	3920937	7
AR	2572251	5
CA	25144529	45
CO	3706911	7
CN	3127288	6
DL	628077	1
FL	13096551	23
GA	6147618	11
HA	1138100	2
ID	1200908	2
IL	11229511	20
IN	5663710	10
IO	2978436	5
KA	2486553	4
KY	4063520	7
LA	4730898	8
ME	1229400	2
MD	4422646	8
MA	5669110	10
MG	9378625	17
MN	4338553	8
MS	2752748	5
MO	5063614	9
MT	887573	2
NB	1632605	3
NV	1254270	2
NH	1138434	2
NJ	7438109	13
NM	1504887	3
NY	16017109	29
NC	6452879	11
ND	676739	1
OH	10753516	19
OK	3476797	6
OR	3277706	6
PA	11705698	21
RI	947300	2
SC	3549879	6
SD	698298	1
TN	5058373	9
TX	17040268	30
UT	2016412	4
VT	574600	1
VA	5883994	10
WA	4958070	9
WV	2034380	4
WS	5014887	9
WY	698309	1
TOTAL REPRESENTATIVES		435